TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 467

THE CHASTLETON CORPORATION AND FELIX LAKE AND CLAUDE H. HAHN, APPELLANTS,

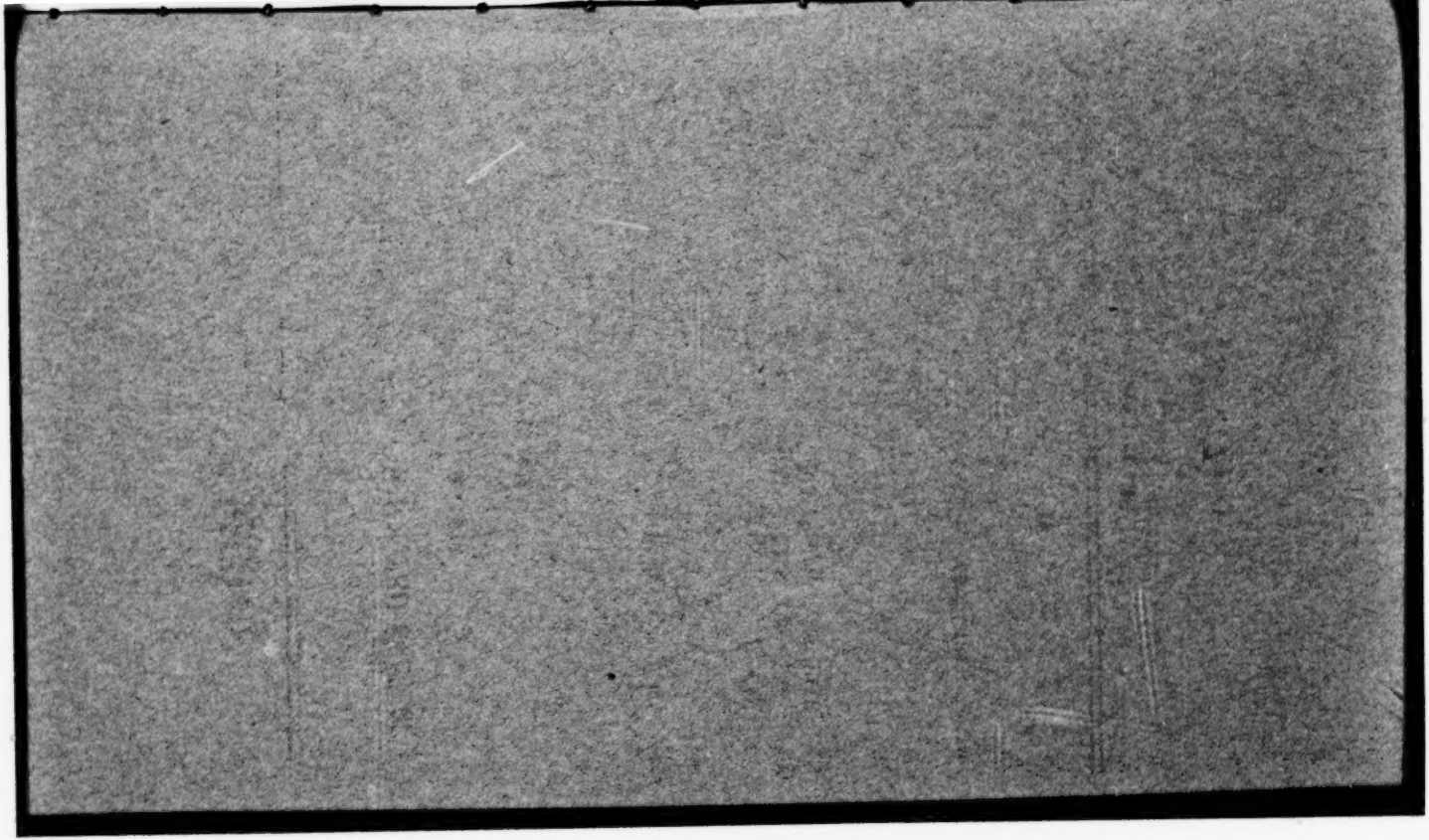
vs.

A. LEFTWICH SINCLAIR, CLARA SEARS TAYLOR, AND WILLIAM F. GUDE, RENT COMMISSION OF THE DISTRICT OF COLUMBIA, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

FILED JULY 31, 1936

(36,777)



(29,777)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 467

THE CHASTLETON CORPORATION AND FELIX LAKE AND CLAUDE H. HAHN, APPELLANTS,

vs.

A. LEFTWICH SINCLAIR, CLARA SEARS TAYLOR, AND WILLIAM F. GUDE, RENT COMMISSION OF THE DISTRICT OF COLUMBIA, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 15, 1923

Court of Appeals of the District of Columbia.

No. 3915.

THE CHASTLETON CORPORATION, a Corp., et al., Appellants,

vs.

A. LEFTWICH SINCLAIR et al.

a Supreme Court of the District of Columbia.

Equity. No. 40650.

THE CHASTLETON CORPORATION, a Corporation, and FELIX LAKE and CLAUDE H. HAHN, Petitioners,

vs.

A LEFTWICH SINCLAIR, CLARA SEARS TAYLOR, and WILLIAM F. Gude, Rent Commissioners of the District of Columbia, and John H. Amig, E. M. Rossiter, Miss H. Ruth Cocke, Dr. Clarence M. Dollman, J. P. Wiley, Dr. De Witt C. Chadwick, Oscar P. Hunt, Mrs. Leola Nelson King, Mary F. Lally, P. P. Truxton, Isel Rose, Dr. F. G. McLeod, Chester Harrell, Paul B. Roberts, R. E. Mathers, D. M. Kindelberger, Mrs. I. V. Hatch, A. W. Ferrin, Carolyn D. Hansen, H. W. Seiller, William Wilson, Charles H. Taylor, McCall Pate, Molly Weaver, Mrs. A. C. McLoughlin, John P. Lally, Estelle Fenno, Teresa R. Bailey, Garnett January, John Wilson Brown, I. E. Block, Herbert Corey, L. W. Walker, Miss Kate L. Moore, Mrs. Elizabeth Reese, Miss H. C. Robinson, W. H. Judge, Martha E. Clark and Edna Turner, G. M. Bugiozet, Martin C. Ansorge, Miss Marjorie F. Jones, Roscoe C. McCulloch, Grace H. Denhardt, T. Griffin Smith, Miss E. H. Smalley, Lambert McAllister, Royal Hungarian Legation, Howard S. Leroy, Emma Edwards and Hope Peckham, W. A. Hughes, H. B. McCawley, A. L. Talbott, Mrs. H. C. Daniels, F. H. Wilson, Zelda Fore, Martha Atkinson, J. P. McMahon, G. H. Lautz, Mrs. Virginia C. O'Brien, Miss F. N. Hoagland, G. S. Wilcox, Miss Faustine Dennis, Mrs. L. E. Neudecker, Donald F. Washburn, James A. Bailey, Miss Nellie G. Bauer, Florence Grimes, Evans E. Moeckel, Caroline Baldwin, Robert H. McNeill Nelson B. Gaskill, George P. Hill, Ralph Bowman, Ben C. Hartig, F. H. Mistretta, Margaret Ambrose and Ruth Pantall, Mrs. L. H. Neudecker, Miss T. I. Hall, Miss Evelyn L. Pearce, Mr. and Mrs. H. H. Burr, Samuel H. Kaufman, Theo-

dore D. Peyser, Mrs. Lydia M. Patterson, A. R. Peters, Ernest H. Emery, A. Wenger, Harry A. Kenny, Elsie Harman, R. J. Anderson, M. E. Hanna, Mrs. H. A. Foster, James F. Johnson, Mrs. T. K. Albaugh, W. S. Harris, W. S. Abernathy, Mrs. Frances F. Wagner, Marie K. Gabler, G. Bryan Pitts, Mrs. A. E. Goldsmith, John R. Waller, Blanche E. Davis, Margaret K. Harris, Mrs. Mary C. Shafer, Miss M. Helen Slaughter, John F. Overend, W.
b C. Ballantyne, Robert S. Brookings, Mrs. O. I. Woodley, Miss E. H. Dougherty, John H. Hoffman, Mrs. Thomas E. McAtee, Florence S. Woolfolk, John R. Waller, John G. Winter, Mrs. H. C. Bolton, Mrs. James M. Nave, Mrs. Genevieve Elliott, E. H. Reede, Albena M. Creller, George S. Groves, Alden Sampson, Cora L. Campbell, Gerald Griffin, Charles D. Hamel, C. W. O'Connor, Nettie Campbell Camp, John Rosenfeld, Nell W. Bartram, Miss M. Sawyer, E. R. Berkeley, Respondents.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:

1 *Petition for Writ of Injunction.*

Filed October 27, 1922.

In the Supreme Court of the District of Columbia.

Equity. No. 40650.

THE CHASTLETON CORPORATION, a Corporation, and FELIX LAKE and CLAUDE H. HAHN, Petitioners,

vs.

A LEFTWICH SINCLAIR, CLARA SEARS TAYLOR, and WILLIAM F. Gude, Rent Commissioners of the District of Columbia, and John H. Amig, E. M. Rossiter, Miss H. Ruth Cocke, Dr. Clarence M. Dollman, J. P. Wiley, Dr. De Witt C. Chadwick, Oscar P. Hunt, Mrs. Leola Nelson King, Mary F. Lally, P. P. Truxton, Isel Rose, Dr. F. G. McLeod, Chester Harrell, Paul B. Roberts, R. E. Mathers, D. M. Kindelberger, Mrs. I. V. Hatch, A. W. Ferrin, Carolyn D. Hansen, H. W. Seiller, William Wilson, Charles H. Taylor, McCall Pate, Molly Weaver, Mrs. A. C. McLoughlin, John P. Lally, Estelle Fenno, Teresa R. Bailey, Garnett January, John Wilson Brown, I. E. Block, Herbert Corey, L. W. Walker, Miss Kate L. Moore, Mrs. Elizabeth Reese, Miss H. C. Robinson, W. H. Judge, Martha E. Clark and Edna Turner, G. M. Bugiozet, Martin C. Ansorge, Miss Marjorie F. Jones, Roscoe C. McCulloch, Grace H. Denhardt, T. Griffin Smith, Miss E. H. Smalley, Lambert McAllister,

Royal Hungarian Legation, Howard S. Leroy, Emma Edwards and Hope Peckham, W. A. Hughes, H. B. McCawley, A. L. Talbott, Mrs. H. C. Daniels, F. H. Wilson, Zelda Fore, Martha Atkinson, J. P. McMahon, G. H. Lautz, Mrs. Virginia C. O'Brien, Miss F. N. Hoagland, G. S. Wilcox, Miss Faustine Dennis, Mrs. L. E. Neudecker, Donald F. Washburn, James A. Bailey, Miss Nellie G. Bauer, Florence Grimes, Evans E. Moeckel, Caroline Baldwin, Robert H. McNeill Nelson B. Gaskill, George P. Hill, Ralph Bowman, Ben C. Hartig, F. H. Mistretta, Margaret Ambrose and Ruth Pantall, Mrs. L. H. Neudecker, Miss T. I. Hall, Miss Evelyn L. Pearce, Mr. and Mrs. H. H. Burr, Samuel H. Kauffman, Theodore D. Peyser, Mrs. Lydia M. Patterson, A. R. Peters, Ernest H. Emery, A. Wenger, Harry A. Kenny, Elsie Harman, R. J. Anderson, M. E. Hanna, Mrs. H. A. Foster, James F. Johnson, Mrs. T. K. Albaugh, W. S. Harris, W. S. Abernathy, Mrs. Francis F. Wagner, Marie K. Gabler, G. Bryan Pitts, Mrs. A. E. Gold-
2 smith, John R. Waller, Blanche E. Davis, Margaret K. Harris, Mrs. Mary C. Shafer, Miss M. Helen Slaughter, John F. Overend, W. C. Ballantyne, Robert S. Brookings, Mrs. O. L. Woodley, Miss E. H. Dougherty, John H. Hoffman, Mrs. Thomas E. McAtee, Florence S. Woolfolk, John R. Waller, John G. Winter, Mrs. H. C. Bolton, Mrs. James M. Nave, Mrs. Genevieve Elliott, E. H. Reede, Albena M. Creller, George S. Groves, Alden Sampson, Cora L. Campbell, Gerald Griffin, Charles D. Hamel, C. W. O'Connor, Nettie Campbell Camp, John Rosenfeld, Nell W. Bartram Miss M. Sawyer, E. R. Berkeley, Respondents.

Your petitioners respectfully represent to this Honorable Court:

(1) Petitioners, the Chastleton Corporation is a corporation incorporated under the laws of the State of Delaware; petitioner Felix Lake is a citizen of the United States and a resident of the District of Columbia; and both petitioners file this suit in their own right as will more fully hereinafter appear.

(2) The defendants A. Leftwich Sinclair, William F. Gude, and Clara Sears Taylor, are the three commissioners constituting the Rent Commission of the District of Columbia, and are sued as such; that the other defendants were at the time of the institution of the proceedings hereinafter in this petition complained of and were the tenants occupying the apartments in said property hereinafter described and are still tenants in said property, and are all sued in their own rights, as will more fully hereinafter appear.

(3) That heretofore, to wit, on January 25, 1922, and for a con-
siderable time prior thereto, your petitioner, Felix Lake, was
3 the owner of certain property located in the City of Washington, District of Columbia, and known as Lots 104, 63 to 76 inclusive, and 70 to 72 inclusive, also south 77 feet by full width of lots 68 and 69 and south 11 feet by full depth of lot 73, all in Square 192, with improvements thereon known as The Chastleton Apartments, Corner 16th & R Streets, Northwest, Washington, District of Columbia, which said property was purchased by the plaintiff, Felix Lake, on the 8th day of April, 1921, before it was

finished, and the plaintiff, Felix Lake, paid for same the sum of Two Million Three Hundred Thousand Dollars, all as shown by a copy of the original contract of purchase had between your petitioner, Felix Lake and the former owner thereof, which said contract is hereto annexed, marked Petitioners' Exhibit No. 1, and prayed to be read and considered as a part of this petition as fully as if set forth in detail herein.

Petitioner Lake further advised the court that after acquisition of this property by him in this manner, he expended large sums of money in furnishing the property and that after the expenditure of the necessary money to furnish said property and the incident losses of, the equipping and renting of said property, the said property actually cost your petitioner Lake in excess of Two and One-half Million Dollars.

(4) Your petitioner Lake further advises the court that on the 27th or 28th day of January, 1922 a written offer to purchase said property was submitted to him by one Jessie Ball du Pont and that after considering the same for several days, he finally on the
4 2nd day of February, 1922, accepted said offer and signed his consent to said agreement of purchase and sale. A copy of said agreement of purchase and sale is hereto attached, marked Petitioners' Exhibit No. 2, and prayed to be read and considered as fully as if set forth in detail herein.

(5) Your petitioners further advise the court that what is known as the Rent Commission of the District of Columbia, a supervisory body acting under authority vested in it by an act of Congress of the United States, issued notice under date of January 25, 1922, directed to the rental agents of this property, to wit, the F. H. Smith Company advising it of its decision to fix and determine a schedule of reasonable rents and charges for all of the apartments in this property, known as the Chastleton Apartment House, copy of said notice being hereto annexed, marked Petitioners' Exhibit No. 3, and prayed to be read and considered as fully as if set forth in detail herein.

(6) Your petitioner Lake further advised this court that when he signed the contract to sell said property on the 2nd of February, 1922, he was on date leaving the City of Washington for the purpose of spending some several weeks in the mountains of North Carolina for the purpose of recuperation by reason of having undergone an operation which necessitated his giving up business and all worries until such time as he could regain his health; that at the time of leaving he had no notice directly or indirectly of any contemplated action by the Rent Commission to consider and fix fair rentals for the apartments. He further advised the court that he had no notice of the contemplated action of the Rent Commission nor of
5 any proceedings or hearing before the Rent Commission until his return to Washington which was sometime before the contract entered into between the said Jessie Ball du Pont and this petitioner for the purchase of said property had been closed and the title conveyed to the said Jessie Ball du Pont, which said contract was closed and such conveyance had on the 27th of March, 1922;

and that thereafter when he did return and learned of such proceedings before the Rent Commission he had parted with title to the property and with all ownership to said property, and, therefore did not take any action or steps to protect himself against such proceedings.

Your petitioners are now advised, however, that the F. H. Smith Company were the rental agents for this property at the time of said purchase and sale under the contract between your petitioner Lake and the said Jessie Ball du Pont and continued as such until the 27th of March, 1922, when the said Jessie Ball du Pont took title to said property. On said date all leases, agreements, and contracts of every kind and nature had with the tenants in said property were delivered to the agent of the said Jessie Ball du Pont, who took them over under an assignment from the F. H. Smith Company and employed her own managers, assistant managers, employees and operated and conducted said property until after the decision of the Rent Commission in said case, which was on the 15th of Aug., 1922.

Petitioner further advises the court that he is now informed that his rental agent through its assistant secretary, who is manager of the Rental Department of the company, filed an affidavit with the Rent Commission, advising it of the absence of your petitioner Lake, of his physical condition of their inability to communicate with him, which said affidavit states thus:

Information to the Rent Commission of the District of Columbia.

Comes now the F. H. Smith Company, a Corporation, by E. G. Perry, Assistant Secretary, and advises the Rent Commission of the District of Columbia to the following effect, to wit:

That certain proceedings have been instituted by tenants in an apartment house known as the Clifton Terrace, who have complained to the Rent Commission that their rental is too high, and that upon said complaint the Rent Commission of the District of Columbia has issued notice that it will, on, to wit. the 14th day of February, A. D., 1922, at the hour of ten o'clock A. M., hear the complaint of the tenants in these several cases and fix the rental to be charged by the Smith Company in the several cases in which complaint has been made to it.

In all of these cases the F. H. Smith Company is named as defendant and no notice of any character has been given to the owner of the property, Felix Lake, nor has the said owner, Felix Lake, been made a party to said proceeding by the Rent Commission.

Deponent upon oath states that the F. H. Smith Company has no interest whatsoever in the Clifton Terrace Apartment property, that the Clifton Terrace Apartment is owned by one Felix Lake who purchased the same and had the same conveyed to him under deed duly recorded among the Land Records of the District of Columbia, and deed being of date and recorded in the month of February, 1920, the said Felix Lake being a resident of the District of Columbia, and has now and has had since the date of the purchase of this property, an office located at 1344 G Street, Northwest, in the District of Columbia.

Deponent further says that the F. H. Smith Company, through its attorney this day, February 14, 1922, at the hour of ten A. M., appeared before the Rent Commission of the District of Columbia and advised the Rent Commission that the F. H. Smith Company were only rental agents and had no further interest in the property and further advised the Rent Commission that the said Felix Lake was the owner of the property and that he should be made a party to the proceeding and that he should be notified in order that he might employ counsel and appear before the Commission to protect his rights as owner of said property.

Deponent further says that counsel for the F. H. Smith Company also advised the Commission this 14th day of February, 1922, that there was an operation performed on Felix Lake some three
7 weeks ago, and that as a result of the operation the said Lake became sick and left the jurisdiction about ten days ago and had not returned and would not return for several days yet, he being at this time in North Carolina.

Deponent says that the information obtained from the office of Felix Lake this morning was to the effect that they expected the said Lake home some time during this present week.

Deponent says that they have no authority to employ counsel nor have they any authority to do anything in connection with this matter by reason of the absence of the said Lake and their inability to communicate with him.

They, therefore, ask in the interest of fairness that the time for hearing be extended for some reasonable time, to be fixed by the Commission, and that Lake be made a party and given notice of the proceeding, in order that he may be given an opportunity to employ counsel and appear and defend his interest with respect to the matters now before the Commission for consideration.

(S.) E. G. PERRY.

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 14th day of February, A. D., 1922.

(S.) FLORA E. DAVIS,
Notary Public, D. C.

Your petitioner, Lake, is advised that this affidavit was filed in what is known as the Clifton Terrace case, which was set for trial on the same day and at the same hour that the Chastleton case was set for trial, all before the Rent Commission, and that he is further advised that counsel for the F. H. Smith Company asked for a continuance in the Chastleton — based upon the facts set forth in this affidavit and further advised the Commission of the fact that petitioner Felix Lake had sold the property to Jessie Ball du Pont under a written contract which could be obtained by the Commission if it so desired
8 and urged the Commission to continue the case for thirty days or for such time as the rental agents could locate your petitioner Felix Lake and advise him of the contemplated action of the Rent Commission and linewise to advise the Du Ponts of such contemplated action of the Rent Commission but the Commission de-

clined to continue the case and insisted that the same proceed, and this notwithstanding the fact that the Rent Commission's attention was called to the fact that your petitioner Felix Lake was not a party to the proceedings, that the du Ponts were not made parties to the proceedings, and that the F. H. Smith Company had no interest in the property except as the rental agents to collect the rents for the then owner, Felix Lake.

Petitioner-' rental agent further advised the Commission where a copy of the contract could be obtained and likewise advised them of the fact that under the terms of the contract the said Jessie Ball du Pont would take possession of the property and become the absolute owner of said property on the 27th day of March 1922.

(7) Your petitioners further advise the court that they are just now advised that shortly after notice was issued to the F. H. Smith Company by the Rent Commission which notice was issued on the 25th day of January, 1922, of its intention to fix a fair rental for the Chastleton Apartments and not later than the 10th day of February, 1922, counsel for the purchaser, Jessie Ball du Pont, having learned of such contemplated action by the Rent Commission, came to Washington, District of Columbia, from Wilmington, Delaware, for the purpose of ascertaining the facts with reference to said hearing, and visited one of the United States Senators in his office in the
9 Capitol Building of the United States in the City of Washington. Petitioners are advised that the said attorney was advised to communicate with the Chairman of the Rent Commission, the defendant, A. Leftwich Sinclair, and that said attorney did have a conversation with A. Leftwich Sinclair over the telephone, during which conversation the said A. Leftwich Sinclair stated in substance thus:

Mr. Pennington: Mr. Sinclair, I understand that you are the Chairman of the Rent Commission and that the Commission has given notice of its purpose and intention to value the Chastleton Apartments and fix a fair rental. I represent the interests that have recently purchased that property and we paid in the neighborhood of three million dollars for the property, which is, as my investigation led me to believe, what the property is worth. What I should like to know is what return the Commission allows to the owner for property, if the Commission has any positive rule on the subject.

Mr. Sinclair: The Commission will allow the owner seven per cent net on the value of the building, but if your people paid Three Million Dollars for the Chastleton property, then they paid too much, and my advice to you is to get from under, and if you will follow the proceedings before the Commission when we take testimony in this case, we will show you a way to get out. The building in my opinion is worth Two Million Dollars and no more and if you paid over that figure for it, you have been stung.

Mr. Pennington: How will I get a copy of the proceedings? Do you have a regular stenographer for the proceedings, so that I
10 may have access to the record?

Mr. Sinclair: No, but we have it reported by stenographers who get a pretty good record of the proceedings, and I will be glad

to let you have a copy of this testimony and will help you to get out of the contract.

Mr. Pennington: Well, I am much concerned about this matter, and perhaps I should like to have a copy of the proceedings. I will advise with you about the matter later.

Your petitioners are now further advised that on the same day at the office of the same United States Senator in the United States Capitol Building another person connected with the Rent Commission of the District of Columbia was sent for by the United States Senator or one of his clerks and that that official or person associated with the Rent Commission came to the United States Capitol and to the office of the United States Senator and while in said office at said time the said person advised the said Pennington that he had paid too much for the Chastleton and that the Rent Commission would on the following Monday morning start taking testimony in the case.

Thereupon the said Pennington inquired of the said person as to the standing and capacity of one W. Gwynn Gardiner (whom, he learned, had been selected by the F. H. Smith Company to appear before the Commission to protect its, the F. H. Smith Company's interest, before the Commission) and thereupon the said person advised the said Pennington that he regarded the said Gardiner as an honorable man, capable and a fighter, but that he was in bad graces with the Rent Commission as the Rent Commission did not
11 like him as he had opposed giving them information that they thought they should have, and thereupon the said Pennington inquired of the said person as to who did stand in the good graces of the Rent Commission and he advised him that Mr. —— a member of the Bar was very friendly to the Chairman of the Commission and that if he was thinking of getting an attorney to represent him that this lawyer could perhaps help him.

(8) Your petitioners are further advised and upon such advice state as a fact that the Rent Commission consisted of only three members and that William F. Gude, one of the three members, had just previous to the commencement of the proceedings by the Rent Commission in this case, received a severe physical injury and was thereafter incapacitated to sit on the Rent Commission and did not in fact sit with the other two Commissioners during the proceedings had in this cause by the Rent Commission, there being only the defendants A. Leftwich Sinclair and Clara Sears Taylor present. Therefore, at least one of the two Commissioners who sat and determined this case and who fixed the value of the apartment after said hearing at Two Million Dollars, determined in his own mind the value of Two Million Dollars for this property before a single line of testimony had been introduced in the case, and notwithstanding the fact that all of the testimony showed the property to be worth from $2,750,000 to $3,250,000, the same being entirely ignored and disregarded by these two members of the Rent Commission, and a value of Two Million Dollars (the value which had been determined before the proceedings began) was fixed as the correct value of said property.

(9) Your petitioners further charge as a fact that the
12 final findings of the Rent Commission state thus:

"Pursuant to the notices heretofore served upon the owners of the apartment house known as the "Chastleton" located at the Northeast corner of 16th and R, N. W. * * *"

when in fact no service of any kind was had upon the owner of the property.

(10) Your petitioners are further advised and informed and therefore charge upon such information and belief that during the proceedings, to wit, on Saturday, the 18th of March, 1922, counsel for the tenants of the Chastleton apartments appeared before the Rent Commission and asked for a continuance, which said application for a continuance was consented to by counsel for the F. H. Smith Company, and that the said hearing was upon said application continued until April 4, 1922. Petitioners are now advised by the counsel for the F. H. Smith Company that on the following Monday, to wit, March 20, 1922, he received from the Rent Commission the following letter, which states thus:

"March 20, 1922.

Honorable W. Gwynne Gardiner,
Attorney and Counsellor,
Woodward Building,
Washington, D. C.

DEAR SIR:

Referring to the matter of The Chastleton Apartment House (Case No. 5739, before the Rent Commission), the hearing of which was, on Saturday, the eighteenth instant, continued until Tuesday, April 4, 1922, at 10 o'clock A. M., I am directed by the Rent Commission to advise you, as Attorney for The F. H. Smith Company, Rental Agent of the owner of said apartment house, that the Commission will not be able to grant any further continuance or postponement of the hearing of said matter, and to suggest that you arrange to have someone represent you at said hearing, on April 4, 1922, in case you should not be able to attend the hearing yourself.

Very truly yours,

A. LEFTWICH SINCLAIR,
Chairman, Rent Commission, D. C.

A. L. S./I. L. H."

13 Petitioners are further advised that counsel for the F. H. Smith Company arranged his engagements so as to be present and as a result the hearing before the Rent Commission was concluded on, to wit, the 21st day of April, 1922. Your petitioners are now further advised that in the proceedings before the Commission, notwithstanding this position of the Rent Commission and its demand that the case proceed without delay, no decision or judgment was entered in said cause until on, to wit the 15th day of August, 1922, although it is their belief from the statements made by the Chairman

of the Commission and from his statement to the attorney for the parties who then had a contract to purchase said building that the Commission had made up its mind and had adjudged the case before one single line of testimony was taken or proceedings had in the case and that the testimony adduced at the hearing was entirely ignored and no consideration was given the same by the Commission.

(11) Your petitioners are further advised that in the proceedings before the Rent Commission the testimony showed that there was no national emergency and the testimony further showed that no emergency existed in Washington, and it further showed that public housing conditions were such that apartments could be obtained in Washington of all character at rentals ranging from Twenty-five Dollars per month up, depending upon the condition and location and size of the apartments, all as shown by a brief synopsis of the testimony given before the Rent Commission in this case on this point, which said synopsis is attached hereto, marked Petitioner's Exhibit No. 4 and prayed to be read and considered as a part hereof as fully as if set forth in detail herein.

14 Petitioners further charge that no war exists at this time and that no national emergency exists at this time, and that, therefore, the Rent Commission's Act of the 24th day of August 1921 and May 22, 1922, under which the Rent Commission was undertaking to act and operate at the time this proceeding was instituted by the Rent Commission and this testimony was given before the Rent Commission, was null and void and contrary to the 5th Amendment to the Constitution of the United States in depriving your petitioners of their property without due process of law, and petitioners are further advised that said Act is null and void under Section 10 of Article 1 of the Constitution of the United States.

Petitioners further state as a fact that at the time of the passage of the Act entitled "An Act to Extend for a Period of Two Years the Provisions of Title 2 of the Food Control and the District of Columbia Rent Act, approved March 22, 1919, as amended" which was on May 22, 1922, there was no state of war between the United States and any other Republic, Sovereignty, Monarchy, State or Nation, that there was no national emergency existing, that there was no emergency existing in the District of Columbia, and the testimony produced before the Rent Commission of the District of Columbia in the hearings before said Commission having to do with fixing the value of the rents for the Chastleton Apartments, a synopsis of which testimony being set forth in Exhibit 4 as above, shows conclusively and in fact that there was no emergency in the District of Columbia, that there was no scarcity of housing space in the District of Columbia, and that there were available for all tenants,

15 apartments for rent varying in size and rental, and suitable to their wants for a reasonable price, to wit, ranging in price from Twenty Five — per Month up.

The testimony further shows that the owners of the Chastleton attempted in no case to hold the tenant to the terms of the lease but

that the owners in all cases authorized and permitted the tenant to move out of the said property when and as the said tenant desired.

Your petitioners are further advised, and, therefore, upon such information charge that the tenants in the Chastleton who appeared and testified and those who sought in any wise to have their rental reduced were those whose income was limited and who were not willing to move into a neighborhood such as their income justified their living in but upon the other hand sought to maintain themselves in the most fashionable apartment house in Washington, where the owner by reason of his effort to furnish the highest standard of service and to maintain his property with every comfort and convenience to the occupants of the apartment, finds himself compelled to charge the rental which he did charge in order to earn a reasonable and fair return on the value of the property.

Your petitioners further advise the court that the possible total gross rentals of said property are in the neighborhood of $356,670.00, which has been reduced by the findings of the Commission to $499,760.00, out of which the sum of $130,000.00, was found by the Commission as necessary to operate and maintain said building, which leaves a balance of $169,760.00 which is 8.488% on the value as fixed by the Commission of Two Million Dollars, and which
16 leaves a balance of $226,670.00 which is 7.555% on the value of Three Million Dollars as shown by all of the testimony. Now if there be deducted from this sum an allowance for vacancies, which according to the undisputed testimony amounts to $60,000.00 per year and an obsolescence charge, which according to the undisputed testimony in the case would be 1½% per year on the value of the property and a depreciation charge according to the undisputed testimony of 3% on the value of the property per year, we would have a net return to the owner of $19,760 or .9% on the valuation of the Commission of $2,000,000 and a return of $31,670 or 1.05% to the owner as shown by the undisputed testimony in the case at rate being charged by owner before reduced by the Commission.

(12) Your petitioners further state as a fact that the findings of the Rent Commission are null and void because by said findings of the Commission they have undertaken to reduce the rental of every apartment in the Chastleton building and to make the same effective from and beginning with March 1, 1922, when, in fact, the decision of the Rent Commission was not entered until the 15th of August, 1922. The action of the Rent Commission, therefore, in undertaking by its order or opinion entered in said cause, to have its findings effective as of March 1, has rendered the same void because the same is retroactive in effect, contrary to law, and contrary to the purpose, intention and legal effect of the provisions of the Rent Commission Act, itself, all as evidenced by the opinion of the Rent Commission rendered in said cause, a copy of which was sent by the Rent Commission to each tenant, except that the copy to each tenant did not contain the findings of fact and did not
17 contain the findings of all of the apartments in the building, but concluded with the findings of the Commission as to the

individual apartment occupied by the tenant to whom said notice was sent, all as evidenced by a copy of the opinion of the Rent Commission filed in said cause, together with the findings of fact of the Commission, filed herewith, marked Petitioner's Exhibit No. 5, and prayed to be read and considered as fully as if set forth in detail herein.

Your petitioners further advise the court that there was evidence in the case upon which a finding of fact of a valuation of Two Million Dollars for the property could be based; that all of the testimony in the case fixed a valuation on the building of from $2,750,000 to $3,250,000, unless it be some testimony offered by one witness on direct examination, which said witness did not return to the Commission for Cross Examination, and failing to return to the Commission for said Cross Examination and the opportunity being denied for Cross Examination, a motion was filed to exclude his testimony entirely, which motion was never acted upon by the Commission, but which testimony was received and considered by the Commission, which action of the Commission in so doing was void and illegal, and without this testimony, there was no testimony of any character which placed a valuation of less than $2,750,000, and any finding of fact by the Commission based upon any facts other than those the record discloses is void.

Petitioners, therefore, state that the valuation of Two Million Dollars, as undertaken to be fixed by the Commission as a value for this property, was not fixed upon any testimony in the case,
18 and such valuation is, therefore, void.

(13) Your petitioners further charge that the testimony shows that there would necessarily be vacancies existing in these apartments during the summer months and that it would be necessary in considering the income to the owner that allowance should be made for the loss of rent due to these vacancies, which vacancies, according to expert opinion would be twenty percent during the summer months, which opinion was based upon the actual result of the summer of 1921, and no allowance whatever was made by the Commission for said vacancies.

(14) Your petitioners further charge that an absolescence charge should have been alowed since it was shown by experts from the Government and employed by the Government in making allowances for obsolescence on similar buildings for the purposes of income tax returns, show that an obsolescence charge of one and one-half percent was allowed by the Government and was a proper and necessary charge in order to maintain the capital invested, and that without said alowance the capital would be necessarily wasted, since the depreciation charge did not cover obsolescence and was a distinct thing from obsolescence.

Your petitioners further charge as a fact that the building was worth Three Million Dollars and an allowance being found by the Commission of $130,000 for maintenance, repairs, taxes, and services, and the Commission having found the gross return to the owner of only 8.8% without any allowance for vacancies, obsolescence or expenses necessary and incident to the operation and preservation of

such a building as this, the net return to the owner would be
19 less than one percent, when the testimony in the case all shows that it is necessary and proper for the owner to have at least from eight to ten percent return as the risk incident to ownership necessitates a larger return to the owner than one who had his money invested in first mortgages.

Your petitioners state as a fact that the testimony in the case and all of the testimony in the case shows that the income being received by the investor from first mortgages was not less than seven percent in the District of Columbia. Your petitioners charge that the gross return to the owner as allowed by the Commission in its finding of less than seven percent on the value of the building, is confiscatory, and is, therefore, void.

(15) Your petitioners advise the court as a fact that the Commission during the hearings permitted the tenants occupying the several apartments in this building to testify in each instance as to what the tenant thought was a reasonable and fair rental to be paid by him or her for the apartment occupied by him or her. This was over the objection and exception of the attorney for the rental agent, and notwithstanding the fact that in every instance the tenant showed now experience and no knowledge of cost of construction, of cost of the building, of the character of construction, of the cost of maintaining it or operating it, and in fact knew nothing about the character of the building or the cost, and when the Chairman of the Commission was asked by counsel for the rental agent as to whether or not the Commission proposed to consider this testimony for the purpose of fixing a fair rental value, the Chairman of the Commission replied that that testimony
20 would be considered by the Commission as well as other testimony offered as fixing the fair rental value for the several apartments in question.

(16) Your petitioner Claude H. Hahn advised the court as a fact that he purchased this Chastleton property without any of the furnishings that had been previously placed in the building by your petitioner Felix Lake, at public auction on, to wit, the 25th of September, 1922, for the sum of $2,453,750.03, and that he paid of said purchase price the sum of $975,000 cash, having purchased the property subject to an encumbrance of $1,478,750.03 and that he caused to be incorporated the plaintiff petitioner corporation, the Chastleton Apartment Corporation, which now holds title to said property. That on the date of said purchase by your petitioner of said property at public auction bids began at $250,000 free and above said above-named encumbrance, and increased from said sum of $250,000 to the sum of $975,000. That your petitioner paid said sum for said property after a thorough investigation as to the value and upon the opinion of disinterested persons that the said property was worth Three Million Dollars. Your petitioner, Hahn, states to the court that there were several persons present who bid on the property beside your petitioner, all of whom were unknown to your petitioner, and their residences and names, therefore being unknown to your petitioner, but your petitioner invites the court's at-

tention to the fact that there were at least two bidders besides your petitioner who ran the bids on said property up to the sum of $950,000 free and above said above-named encumbrance, the bids advancing at the rate of $5,000 each bid after the bid of
21 $925,000 was made until it had reached the point of $950,000, when your petitioner made his bid of $975,000, at which price the property was sold to him.

(17) Your petitioners are further advised that there was no notice of any character given by the Rent Commission of its intention to of fix the rentals on said property and that none of the mortgagees or parties secured under the several trusts on said property had any notice whatever that such a proceeding was being contemplated by the Rent Commission or that said hearings were actually taking place before the Rent Commission or that said Rent Commission had rendered a decision in said cause, until long after said decision was rendered and the interest on notes was not paid when due and the holders thereof called upon the trustees to make sale of said property, which sale of said property was in fact had by such action of the holders, holding notes secured under said mortgages secured on said Chastleton Apartments.

(18) Your petitioners further charge that the Rent Commission by its said order has undertaken to fix a rental for Apartment No. 720-724-726 of $325.00, which is an increase in the rental on said apartment from $100.00 per month, and this notwithstanding the fact that the occupant of said apartment has a valid five year lease on said property which lease does not expire until the 1st day of September, 1926, and in face of the fact that the testimony shows that the $100 per month was not the total consideration being paid for said apartment, but that the occupant of said apartment made said lease upon the condition and with the understanding
22 that he should pay rental in addition to the consideration of $100 for said apartment in services to be performed by him in connection with the management, operation, and supervision of said apartment during the term of said lease, and which said notice of said lease and its conditions and terms were known to the party who purchased said property and took title to same on the 27th day of March, 1922, and they further charge that the Commission undertook to fix the rental without taking any testimony of any character as to the value of those additional services, and your petitioners are, therefore, advised, that the action of the Rent Commission in increasing said rental is illegal and void, that the occupant of said apartment insists upon the fulfillment and the carrying out of his lease under the conditions named, and that the income of the present owner will, therefore, necessarily be reduced because of said illegal finding of the Rent Commission in regard to this apartment, and that, therefore, said action of the Rent Commission is null and void and of no legal effect.

(19) Your petitioners further advise the court as a fact that prior to the notice of the intentions of the Rent Commission to fix a valuation for the property, the then owner of said property, your petitioner, Felix Lake, entered into a lease agreement with one Peter

Boras to operate the dining room of said apartment and to pay him therefor the sum equal to five per cent of the gross receipts from said dining room and the privileges incident thereto, this by reason of the fact that an attempt had been made by Petitioner Lake to operate a dining room, which had resulted in a very considerable loss to your petitioner Lake, and your petitioners now state to the court that the Rent Commission without any notice to anyone
23 that they intended in any wise to fix a fair rental for the privilege of using this dining room and without a scintilla of evidence of any character as to the value of a lease on said dining room, fixed the rental value on said dining room at the sum of $250 per month, and your petitioners are advised that said action by the Rent Commission is illegal and void.

(20) Your petitioners further allege upon information and belief that with very few exceptions the tenants of the Chastleton are not employed by the United States Government. They further charge upon information and belief that a great majority of the tenants have no real estate in the District of Columbia and so far as your petitioners can ascertain they have no personal property that would be subject to execution under any judgment obtained against them, should this court, or the Supreme Court of the United States finally determine that the action of the Rent Commission was void, and, therefore, unless some action be taken by this court by its Writ of Injunction or by a Restraining Order to prevent the putting into effect of the order of the Rent Commission of the 25th of September, 1922, great loss, damage, and injury will be done to your petitioner, the Chastleton Apartment Corporation, as the owner of said property by said unlawful opinion of the Rent Commission.

Your petitioner the Chastleton Apartment Corporation states that it acquired the property from your petitioner Hahn who acquired the same on the 25th day of September, 1922, at public auction as heretofore alleged in this bill, without any knowledge whatever on the part of your petitioner Hahn when he acquired said property that the Rent Commission by its decision had undertaken to have the said decision retroactive as of March 1, 1922, with the result that the present tenants in the apartment and each of them who were tenants at the time of the proceeding before the Rent
24 Commission are now demanding of your petitioner, the Chastleton Apartment Corporation, as owner, the return of all moneys paid by each tenant as rental from March 1, 1922 to October 1, 1922, over and above the rental fixed by the Rent Commission as of March 1, 1922, all as evidenced by a letter dated October 2, 1922, addressed to the F. H. Smith Company, rental agents of said property, which said letter states thus:

GENTLEMEN:

On the 27th instant I received a notice from you to the effect that the Chastleton Apartment had been purchased by one of your clients and that you were charged with the management and collection of rents. I am therefore writing to you in regard to the

decision of the Rent Commission to reduce the rent for my apartment, No. 817, from $100 to $80 per month, this reduction to take effect from March 1, 1922.

I paid the old rent of $100 per month up to and including August 31, 1922, so that the retroactive feature of the Rent Commission's decision is applicable to the six months from March to August inclusive, which, at $20 per month, is equivalent to $120. I paid the new rent of $80 a month for my apartment for the month of September to Mr. Reilly, Agent for the National City Development Company. The Rent Commission has advised me that despite the fact that its decision has been appealed, the courts have held that until the Commission's decision has been reversed the new rents will be in force and the excess rent from March until August, inclusive, should be returned to the tenant.

I have received orders to leave Washington about the end of October and proceed to Manila, P. I. I therefore request that you send me a check for $120 as soon as possible to cover the difference in rent from March to August inclusive.

Yours truly,

____ ____.

Petitioner, the Chastleton Apartment Corporation is advised that the total sum to be repaid by your petitioner is something over $30,000 should the Rent Commission's decision in this case remain in force as valid and binding on this petitioner.

Your petitioner, Felix Lake, further advised the court as a fact that the tenants in the Chastleton are now demanding the return of all excess rental paid by them, that is they are demanding that your petitioner Lake, who owned said property up to the 27th of March, 1922, pay back to them the difference between the rental paid to him from March 1 to March 27 and the amount fixed by the Rent Commission as the proper rental, and that said sum, so due
25 by your petitioner Lake to the said tenants under said demand should the action of the Rent Commission be declared valid and binding, will be in excess of $7,000.00.

Your petitioner Hahn advised the court that he cannot tell the exact amount due and payable to the tenants by him should said order of the Rent Commission be declared valid and binding, but that the said amount claimed, while small, would amount to something.

(21) Your petitioners further state as a fact that while the decision of the Rent Commission in the above entitled cause was rendered on the 15th of August, 1922, and an appeal was duly taken and the bond on appeal filed and approved within ten days thereafter as required by the rules, nevertheless, the Rent Commission on the 22nd day of August, 1922, without notice to the owner or to any other person as far as your petitioners can ascertain, amended its findings as to Apartment No. 202, further reducing the rental from $142.50 per month, as found in its said findings of August 15, 1922, to $90.00 per month. Petitioners further state as a fact that thereafter on, to wit, the 7th day of September, 1922, the Commission

further reduced the rental of Apartment No. 236 from $100 per month, as per its findings of August 15, 1922, to $75.00 per month, and this without any notice as far as petitioners know or are able to ascertain, to any person in interest. Petitioners further advise the court that the Rent Commission is now undertaking to hear and consider an application to amend and reduce the rental of Apartment No. 715, occupied by Rev. W. S. Abernathy, the rental
26 of said apartment being reduced on the 15th of August by the order of the Commission from $125 to $120 per month.

(22) Your petitioners further aver and state that the form of lease entered into between the respective tenants on the one side and the F. H. Smith Company, A Corporation, Agent for the District Apartment Corporation, the original owner of said building, and agent for Felix Lake, who was the owner after his agreement to purchase, are in words and figures as shown by said forms of lease filed herewith as Petitioners' Exhibit No. 6, and which are prayed to be read and considered as fully as if set forth in detail herein.

(23) Your petitioners further charge that in view of the fact that the final disposition of this case on appeal can not be determined within a shorter period than about two years, and in view of the fact that should the Rent Commission's order be declared by this court or the Court of Appeals or the Supreme Court of the United States to be null and void or illegal, petitioners would be without relief, in fact, for the reason that the financial condition of the tenants would prevent them from satisfying any judgments that might be obtained by your petitioners against them for the $38,000 or more which is now demanded by your petitioners from the tenants for the excess rental paid from March 1, 1922 to the present time.

Your petitioners would likewise be without relief and would be unable to recover the difference between the rental for the several apartments as fixed by the Rent Commission and the amount actually due your petitioners as a fair and reasonable rental from this
27 date until the final decision of the case for the reason that many of the tenants would have moved from the apartment and from the city before such decision would be rendered, and for the further reason that the great majority of the tenants have no real estate out of which a judgment, if obtained against them, could be satisfied, and your petitioners further state upon information and belief that they have no personal property out of which a judgment could be satisfied, and, therefore, your petitioners are without relief in law and without full, adequate and complete relief in equity unless this court by the aid of its restraining order or injunction will require the tenants to place the difference between the amount fixed by the Rent Commission and the amount claimed to be due by your petitioners, as rental in a fund either in the Registry of Court or payable to your petitioners upon their giving bond in such amount as may be determined by this court and to preserve said fund until the final disposition of this case and to await said disposition.

(24) Your petitioners further respectfully state to this court that the Commission, in its hearings had to determine the fair value of

this property, did in fact, undertake to furnish evidence to the Du Ponts in order to make them dissatisfied and to assist them in their desire to have the property turned back to Lake, and in this connection the Court's attention is respectfully invited to an examination, conducted by the Chairman of the Commission himself, of one of the witnesses in the case, which testimony appears on Pages 164-167 inclusive of the Transcript of Record of the hearings had be-
28 fore the Rent Commission in said hearings by it to fix the value of said property and the fair rentals, which pages of the Transcript of Record are copied verbatim from the record and attached hereto marked Petitioners' Exhibit No. 7, and prayed to be read and considered as a part hereof, as fully as if set forth in detail herein. By reference to said testimony the Court will see that it had no bearing whatever on the question of value of the property, but said testimony was taken only in accordance with the offer of the Chairman of the Commission made to the attorney for the purchaser, Jessie Ball du Pont, to assist her in "getting from under" the contract, if she so desired.

(25) Your petitioners further invite the Court's attention to the fact that when this opinion was handed down on, to wit, the 15th day of August, 1922, within a period eight days thereafter and on, to wit, the 23rd day of August, 1922, counsel representing said purchaser wrote to your petitioner Felix Lake, demanding the return of all moneys and tendering back the property, all as evidenced by said letter as follows, to wit:

Douglas, Obear & Douglas,
Attorneys and Counsellors at Law,
Southern Building,
Suite 822-830.

Registered.

Washington, D. C., August 23, 1922.

Mr. Felix Lake,
1344 G St. N. W.,
Washington, D. C.

DEAR SIR:

As counsel for the National City Development Company and Mrs. Jessie Ball Du Pont, we are instructed to advise you that there has come to the knowledge of Mrs. Du Pont and the National City Development Company facts which will justify the re-
29 scission of the sale of the Chastleton. We hereby offer to reconvey the Chastleton to you, and demand that you reconvey the land and return the money consideration given you in payment for your equity in the Chastleton, otherwise suit will be instituted to effect this end.

Very truly yours,

DOUGLAS, OBEAR & DOUGLAS,
By J. V. MORGAN.

J. V. M. / H.

(26) Your petitioners further state as a fact that a few days after this letter of Messrs. Douglas, Obear & Douglas of the 23d of August, 1922, was delivered to Felix Lake, the said Jessie Ball Du Pont and the National City Development Company, a Corporation, who held title to said property, instituted a proceeding in equity in the Supreme Court of the District of Columbia, praying for a rescission of the contract of January 27, 1922, upon the ground of fraud as to the value of the property and other allegations in the bill immaterial in so far as this case is concerned, and that suit is now pending in said court undisposed of. Your petitioners advise the court, however, that the said Jessie Ball Du Pont and the said National City Development Company and both of them refused to pay any of the obligations due and payable under the terms of the trusts on said Chastleton property and the same was, therefore, and by reason of default in the payment of the notes secured by a trust on said property, sold on the 25th day of September, 1922.

(27) Your petitioners further advise the court that when your petitioner, Claude H. Hahn purchased said property, on, to wit, the 25th day of September, and when he caused the said Chastleton Apartment Corporation to be formed and transferred title thereto, an appeal had been taken in the Rent Commission from said order and findings of the Rent Commission in said cause, and an appeal bond had been given, thereby perfecting the appeal in the Rent Commission and taking the jurisdiction from the Rent Commission, and your petitioners therefore, not being made parties to the proceedings in the Rent Commission and being unable to lawfully become parties in the Rent Commission, are without remedy unless relief be given them by this suit in the equity court.

Therefore, premises considered, petitioners pray:

(1) That a subpœna issue out of this Honorable Court directed to the defendants and each of them requiring them to appear in this court on a day certain and answer the exigencies of this bill, but not under oath, oath being expressly waived.

(2) That notice be given to the defendants and each of them requiring them to appear in this court on a day certain and show cause why a restraining order or injunction should not be issued out of this court enjoining and restraining the Rent Commission and the defendants and each of them from attempting in any wise to enforce the terms of the order of the Rent Commission of August 15, 1922.

(3) That upon final hearing of said cause this Court may decree the order of the Rent Commission of August 15, 1922, to be null and void.

(4) And for such other, further, and general relief as to the court would seem just and proper.

(Signed) _____.
(Signed) FELIX LAKE.
(Signed) FRANCIS W. COOK.

(Signed) W. GWYNN GARDINER,
Attorney for Petitioners.

We, Felix Lake, Claude H. Hahn, and The Chastleton Corporation by Francis W. Cook its President, being first duly sworn on oath depose and state that we have read the foregoing petition by us subscribed and know the contents thereof; that the matters and things therein contained of our own knowledge are true and those upon information and belief, we believe to be true.

(Signed) _____.
(Signed) FELIX LAKE.
(Signed) FRANCIS W. COOK.

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 26th day of October, A. D., 1922.

[SEAL.] (Signed) ETHEL R. GUISE,
Notary Public, D. C.

32 EXHIBIT No. 1.

Filed October 27, 1922. Morgan H. Beach, Clerk.

"Office of

The F. H. Smith Company,

Incorporated,

Real Estate, Loans, and Insurance,

815 15th Street N. W.

$20,000.00. Washington D. C., April 8, 1921.

"Received of Felix Lake a deposit of twenty thousand dollars to be paid as part payment in purchase of Lots 63 to 67 inclusive 70 to 72 inclusive and Part of Lots 68, 69 and 73, and also Lot 104 in Square 192, Washington, D. C., with the improvements thereon, known as The Chastleton Apartment-Hotel (Consisting of the Original Chastleton Building and the Chastleton Annex), being the Northeast Corner of Sixteenth and R Streets, Northwest.

"Sold for two million three hundred thousand dollars ($2,300,000) on the following terms: $200,000 to be paid in cash at time of transfer (of which above deposit of $20,000 is to be a part), and Purchaser to assume existing First Mortgages of $700,000 and $725,000; a Second Mortgage of $225,000 on the Original Building and a Second Mortgage of $500,000 on the Annex (this trust being also a third mortgage on the Original Building); all of said Mortgages bearing 6% intetest per annum. Curtails on First Mortgages to be made in accordance with terms of the Deeds of Trust of record; and curtails on the Second Mortgages aggregate $8,250 monthly—being $2,500 curtail on original Building 2d mortgage and $5,750 on Annex Second Mortgage. Payments on principal of both
33 the First and Second Mortgages are made monthly; and payments of interest are made monthly on the First Mortgages and monthly and semi-annually on the Second Mortgages. It is

understood and agreed that at time this contract is to be consum-ated the balance due on the mortgages on this property are to aggregate $2,100,000. If the aggregate of the balances due on existing mortgages at time of transfer, together with the $200,000 cash payment, is less than $2,300,000 a sufficient amount of the Notes on the property shall be extended for a period of five years from date of settlement, with interest at 6% per annum, to cover such difference. It is further agreed that all payments of principal due at time of transfer shall be paid except the Notes to cover difference provided for above, which are to be extended for a period of five years. No payments other than stated in this contract are payable.

"Property sold as a good record title or deposit to be returned and sale declared off. Vendor and agents assume no responsibilities for the cost of abstract, should title upon examination prove defective, nor for any damages by reason of said title providing defective. Taxes, interest, rents and insurance to be adjusted by calculation to date of transfer. Assessments, whether levied or not, for special improvements already made, to be paid by vendor.

"Purchaser is required to make full settlement in accordance with the terms of sale within ninety (90) days from date of acceptance by owner, as indicated hereon, or the deposit will be forfeited; it being agreed that one-half of the amount of said forfeited deposit shall be paid the F. H. Smith Company, as compensation for its services.

34 "In event of forfeiture of deposit, the purchaser shall not be relieved of responsibility to comply with the terms of sale.

"Vendor to give the usual Special Warranty Deed and to pay for revenue stamps on same if required.

"Conveyancing at purchaser's cost.

"Made and Signed in Triplicate.

THE F. H. SMITH COMPANY,
Agent,

By G. BRYAN PITTS.

Approved April 12th, 1921.
THE DISTRICT APARTMENT CORP.,
By FRANK B. ESSEX, *Owner,*
President.

[SEAL.] SIDNEY ROCHE,
Sec'y-Treas."

This Contract is made subject to approval of owner and is not valid unless signed by an officer of the F. H. Smith Company.

Accepted by
"FELIX LAKE.

35 PETITIONER'S EXHIBIT No. 2.

Filed October 27, 1922. Morgan H. Beach, Clerk.

William E. Fowler & Co.,

Private Bankers,

Real Estate,

819 Fifteenth Street N. W.

Phones, Main 8416-8417.

$5,000.00.

Washington, D. C., January 27, 1922.

Received of Jessie Bail Dupont a deposit of five thousand dollars, to be applied as part payment in purchase of Lots 104, 63 to 76 inclusive, and 70 to 72 inclusive, also south 77 feet by full width of lots 68 and 69 and south 11 feet by full depth of lot 73, all in square 192, with improvements thereon known as The Chastleton Apartments, corner 16th & R Streets, Northwest, Washington, District of Columbia.

Terms of Sale.—Purchaser agrees to take above described property subject to an aggregate encumbrance of Two Million Five Hundred Thousand ($2,500,000) Dollars, bearing interest at the rate of 6% per annum, and for the equity therein and all furniture and furnishings belonging to the building, they will pay One Hundred and Fifty Thousand ($150,000) Dollars cash including said deposit and in addition thereto, will cause to be conveyed clear of encumbrance a certain tract or tracts of land containing about 2,100 acres with all water, mineral and timber rights situate near Great Falls in Montgomery County, State of Maryland.

Title to property described herein to be good except as to existing covenants if any running with the land, or deposit to be returned.

Examination of title, revenue stamps and conveyancing of
36 Chastleton Apartments at the cost of purchaser; provided, however, that if upon examination the title should be found defective and such defect or imperfection is not removed by the vendor within the time herein specified, then the cost of such examination shall be paid by the vendor.

Purchaser is required to make full settlement in accordance with the above terms of sale within 60 days from this date. If purchaser fails to make full settlement within the time herein specified, deposit will be forfeited, but forfeiture of deposit shall not relieve the purchaser of obligation to comply with the terms of sale. Vendor to execute the usual special warranty deed. This contract is made subject to approval of owner.

Examination of title to said 2,100 acres of land, revenue stamps and conveyancing shall be paid for by Felix Lake.

WILLIAM E. FOWLER & CO.,
Agent,

By S. R. NORMAN,
Vice President.

Made in triplicate.

I hereby agree to purchase the property described in the foregoing receipt and contract upon the terms set forth therein.

____ ____,
Purchaser.

I hereby ratify and approve the foregoing contract of sale and to sell and convey the property therein described upon the terms therein set forth.

FELIX LAKE,
Owner.

37 EXHIBIT No. 3.

Filed October 27, 1922. Morgan H. Beach, Clerk.

Case No. 5739.

"In the Matter of the CHASTLETON APARTMENT HOUSE, 16th & R Sts. N. W., Washington, D. C.

To the F. H. Smith Company, Agent,
815 Fifteenth Street N. W.,
Washington, D. C.:

You are hereby notified that, pursuant to the provisions of Section 117 of the Act of Congress known as "The Food Control and the District of Columbia Rents Act", approved October 22, 1919, and extended by an Act of Congress, approved August 24, 1921, the Rent Commission of the District of Columbia, has decided to fix and determine a schedule of fair and reasonable rates and charges for the apartment house known and designated as The Chasleton Apt. House, 16th and R Sts., N. W. in the City of Washington, District of Columbia, and that, to this end, will meet, in its hearing room, No. 1330 F Street, N. W., (Fifth Floor), on the 20th day of February, A. D. 1922, at 10 o'clock A. M., to hear and receive such evidence as may be offered or submitted to it by the owner of said apartment house, or by the tenants thereof, touching the question of the fairness and reasonableness of the rates and charges for said apartment house.

RENT COMMISSION OF THE DISTRICT OF COLUMBIA,
By A. LEFTWICH SINCLAIR,
Chairman."

January 25, 1922."

38 PETITIONER'S EXHIBIT No. 4.

Synopsis.

Filed October 27, 1922. Morgan H. Beach, Clerk.

From Transcript of Record, Page- 569-570.

EDWARD G. PERRY, witness:

Q. I will ask you whether or not the rental condition is in the same condition now as to availability of apartments as it was last summer. If not, are there more apartments now offered for rent than last summer, or less? A. In my judgment there are considerably more apartments available to day than have been available for three years.

Q. How do you arrive at that? What information have you on the subject? A. Well, we have apartments for rent now. I remember quite well a building which we managed, one of the most popular houses we have ever managed,—The Dupont, with a 5-room and bath apartment for rent in that building on the first of January, and it was advertised constantly for one month before it was rented. We have eight apartments to rent to day in The Chastleton.

Page 571.

A. I have a copy of a list of unfurnished apartments advertised in last Sunday's "Star". This list contains 44 separate and distinct advertisements for apartments—unfurnished apartments for rent by various agents.

(The list of apartments was copied into the record and is as follows:)

Page 573.

39

Apartments to Let.

Unfurnished—Continued.

4 rooms and bath to Purchaser of furniture. Apt. 33, 706 11th N. W.

4 room Apt. First Floor: Fireless cooker; electricity, heat gas; ground for garden. 1805 Lawrence St. N. E. 26*

Available March 15. Desirable apartment of three rooms and bath, combined with two large rooms and bath which can be utilized as offices or living quarters; convenient to all government departments and within easy walking distance of the shopping district; located on H St. near 17th N. W. For further information phone Frank A. Gibbons, Main 218, or call at 520 Southern Bldg.

Studio or Apartment.
Very moderate rental. Apply to Janitor, 8 Lafayette Square. 26*

2 Large Rooms, Kitchen, Bath; complete in every detail for housekeeping; electricity, heat. Apply 2418 14th N. W.
26*

Three large rooms and private bath; all modern improvements. 1315 Columbia Road. 27*

912 15th St. N. W.
Desirable 5 room and bath apartment, suitable for down-
40 town dwelling or studio fronting on McPherson Sq., with light on all four sides. Unusually large rooms. Attractive, well kept entrance.
H. L. Rust, 912 15th St. N. W.

Modern, 2 room, bath, non-housekeeping apartments; downtown location; immediate possession. The Chaumont, 1336 Eye St. N. W.
H. L. Rust, 912 15th St. N. E.

The Chaumont 1336 Eye St. N. W. Unfurnished 2 room and bath apartment; non-housekeeping; downtown section; rent $60. Call between 5 and 9 P. M. Apt. 403 Immediate possession.
26*

Two rooms, kitchenette, bath; N. W.; rent $50; give phone number in replying Address Box 30H Star Office.

Large 6 room and bath apartment; newly decorated throughout. The Portner North 1421.

1151 New Hampshire Ave. N. W.
Apartment No. 2.
Two rooms, kitchen and bath; in good condition; well heated; electricity, possession now; $65 per month.
The F. H. Smith Company, 1414-1416 Eye St. N. W., Temporary Location.

Entire Second Floor; three rooms bath, porch laundry $65 monthly including H. W. H., gas, electricity. 1403 Perry Pl. N. W.
26*

41 Three Rooms and Kitchen or suitable for business 1303 F St. N. W. 26*

1465 Columbia Road.
Two rooms, kitchen and bath, $70.
Geo. W. Linkins, 1719 K St. Main 8298-99.

1901 Columbia Road, Montello Apt.
A few desirable 2 room, reception hall, kitchen bath and porch apartments.
B. F. Saul Co. 1212 Eye St. N. W.
4—3915a

943 Mass. Ave. N. W. Modern flat 4 rooms bath, sleeping porch, apply within. 26*

Willard Courts, 1916 17th N. W.—two rooms, kitchenette and bath; immediately available on cooperative sales plan; moderate cash payment; monthly payment $59.87.
Union Realty Corporation, 1410 G. Main 8415.

Copley Courts, 1514 17th N. W. 2 rooms, kitchenette and bath, immediately available on cooperative sales plan; moderate cash payment; monthly payment $65.54.
Union Realty Corporation, 1410 G N. W. Main 8415.

Four large rooms, Newly Painted and papered and bath to refined couple of adults only. Call Lincoln 619 W.

42 Nr. Soldiers' Home Ga. Ave.
Attractive housekeeping apt. in modern apartment house; A. M. I.; 5 rooms, tiled bath; adults only $50. Phone Adams 308.

Carroll Manor, Takoma Park, Md.; in new building, 4 rooms, bath; 2 porches, first floor, modern; heat furnished; $75 per month. Apply janitor or National Realty Co. Bond Bldg. Main 7807.

Five rooms and bath, $50 per month 620 G St. N. E.

Two rooms and bath—Airy View 2425 20th St. N. W.; possession March 1st. See Janitor or phone Lincoln 1734.

1200 29th N. W.—2 rooms, kitchen and bath, McNey Realty Co. 726 14th St. N. W. Main 3939.

Six rooms and bath, $45. 107 D St. N. E. Lincoln 5571. 28*

Two rooms and kitchenette; heat and gas and phone furnished. Reasonable. Call Lincoln 7169.

2574 University Place—N. W. Cor. Euclid St. 2 rooms, kitchenette and bath; a. m. i.; newly papered, adults. Owner $55.

Delightful four rooms and bath on main floor. No. 1429 Rhode Island Ave. N. W.

43 9th St. (Nr. L.) 4 rooms. B., Modern h. k.; $75 per m.
Louis P. Shoemaker, 1407 N. Y. ave., Main 1166.

Two or three large outside, bright rooms and bath; private family, reasonable a. m. i., newly papered. 930 Kearney St. N. E.
(Brookland.)

Petworth—Two or three rooms, tile bath, complete kitchen; gentiles only Adams 2254 after 5.

$70 Large 5-r. and b. Apt.; recently remodeled bldg.; newly papered and painted electricity and all other mod. improvements; nr. Capitol and Library; immediate occupancy. Can be inspected Sunday or after 5.30 p. m. daily. Apply Apt. No. 1, 118 4th St. N. E.

Two rooms, kitchen, bath; prefer Jewish family; children studying music; $55. Address Box 97 H Star Office.

Takoma Park, D. C., 3 rooms, kitchenette and sleeping porch; semi-private bath; garage; available March 15. 138 Carrol Ave.

3 room *Pat.* 620 F N. E. Heat, Bath, gas and back porch. Lincoln 7130.

28*

1 room and bath, $30 per month; 5 room and bath $60 per month; 2 rooms and bath, $75 per month; 3 rooms and bath, $100 per month; 4 rooms and bath, $150 per month; 6 rooms and bath, $175 per month 12 rooms and 3 baths, $350.

44 Randall H. Hagner & Co., 1207 Conn. Ave., Franklin 4366-67-68.

One or two rooms, kitchenette and bath, in apt. house; N. W. location Franklin 1668 J between 9 and 1 p. m.

1828 Calif. St. 5-room apt. with modern kitchen and private bath; newly decorated, papered and painted thorughout; h. w. h. elec. gas, phone and laundry privilege furnished, adults.

Two H. K. New Apartments; 3 rooms and bath; no children. 211 9th N. W.

Unfurnished Three room kitchen and bath apartment; Mt. Pleasant; for young married couple; very reasonable. Phone Col. 246, bet. 10 and 2.

Three large rooms, kitchenette and bath with electric light and gas furnished service, etc. at 1022 Vermont Ave.; price $100. Phone Main 5070.

1618 19th St. No. W.—Four housekeeping rooms and reception hall; also unfurnished or furnished rooms; one block from Dupont Circle.

26*

Page- 584-586.

Mr. Gardiner: For the record I will state that I propose to reserve all the rights in this case, and one of the points that I shall make is that there is not such an emergency existing to day as
45 warrants this Commission or any other commission. It might not be admissible before the Commission for the benefit of the Commission itself, but I propose to protect and preserve of record my rights. You can rule on it and allow me an exception if you desire and I will make my proffer. It is the same thing.

Mr. McNeill: If the Commission would like to hear it, I make no objection but if we are interested in keeping the record to the smallest compass possible and only secure relevant evidence,—for that purpose I do object.

The Chairman: You object to it, do you?

Mr. McNeill: Yes, sir.

The Chairman: The objection is sustained. Exception allowed.

Mr. Gardiner: Now, I proffer to prove—there is no use bringing witnesses then as to the condition in Southeast and the Southwest under your ruling. I can make the proffer. I proffer to prove that there would be to day and there are to day a great number of owners of private properties, dwelling properties, who decline to offer them for rent because of the Rent Commission, and their belief, whether rightly or wrongly, I am not saying, of course,—that the Rent Commission will reduce the rent to a point where it will not yield a fair and decent return on the investment. Therefore, every real estate — has experienced the fact that all of the private residences have been withdrawn from the markets as far as rental is concerned, and offer for sale, and that in no case has any of the officers, with one or two exceptions, found that any property which was vacated for any purpose,—any property, I mean residences as distinguished from apartments, has been offered for rent, has declined thereafter to
46 offer it for rent upon the ground that they would sell it or leave it vacant because they did not propose that the Rent Commission should reduce their rent beyond a living rental.

Mr. McNeill: I make formal objection — that as being irrelevant.

The Chairman: The objection is sustained and exception allowed.

Evidence was further offered to show that there were few apartment houses being built at the time of the hearings and that there were some being completed at that time which had not been filled.

Other testimony was given in the hearing before the Rent Commission and is transcribed *as* pg. 233 of the Record of said hearing, said testimony stating thus:

Q. May I ask you now with reference to the condition in Washington generally. Your office is a large office; I believe it is the largest one in town and does business in a large way. You must know generally the condition now in the city. What is the condition with reference to housing now in the city? Is there an emergency existing now such as there was two years ago? A. No.

There are apartments all over the city that can be rented, but the trouble is the same as in a great many other things in life, people want to live beyond their means.

47 EXHIBIT No. 5.

"Before the Rent Commission of the District of Columbia."

No. 5739.

In re THE CHASTLETON APARTMENT HOUSE, Sixteenth and R Streets N. W., Washington, D. C.

Pursuant to the notices heretofore served upon the owners of the apartment house known and designated as "The Chastleton," located at the northeast corner of Sixteenth and R Streets, Northwest, in the City of Washington, District of Columbia, and upon the tenants and occupants of the apartments in said apartment house, notifying them and each of them, that the Commission had decided to fix and determine a schedule of fair and reasonable rates and charges for the said apartment house, and that, to that end, would meet in its hearing room, No. 1330 F Street, Northwest, in said City and District, on the twentieth day of February, 1922, at ten o'clock A. M., to hear and receive such evidence as might be offered or submitted to it, touching the question of the fairness and reasonableness of the rates and charges for said apartment house, the Commission met at said place, on said date, and on divers other dates, pursuant to adjournment, and heard and received certain evidence submitted by and on behalf of the owners of said apartment house, and said tenants and occupants thereof, and thereafter personally viewed and inspected the said apartment house and apartments therein; and thereupon, on consideration of said evidence and its personal view and inspection of said apartment house and apartments, as aforesaid, the Commission, this seventh day of August, A. D. 1922, finds and de-

48 termines that the rates and charges heretofore demanded for the apartments in said apartment house, respectively, are unfair and unreasonable rates and charges for said apartments, respectively, in view of the size, location, character and condition of said apartments, respectively, and the character and condition of said apartment house, and that the fair and reasonable rates and charges for the said apartments, respectively, from and after the first day of March, 1922, are as folows; to wit:

Apartment No. 101, unfurnished, one hundred and ten dollars ($110.00) per month;

Apartment No. 103, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;

Apartment No. 109, unfurnished, eighty-two dollars and fifty cents ($82.50) per month;

Apartment No. 117, unfurnished, eighty-two dollars and fifty cents ($82.50) per month;

Apartment No. 118, unfurnished, thirty-five dollars ($35.00) per month;
Apartment No. 119, unfurnished, thirty dollars ($30.00) per month;
Apartment No. 120, unfurnished, ninety dollars ($90.00) per month;
Apartment No. 121, unfurnished, thirty-five dollars ($35.00) per month;
Apartment No. 122, unfurnished, thirty-five dollars ($35.00) per month;
Apartment No. 123, unfurnished, eighty dollars ($80.00) per month;
Apartment No. 124, unfurnished, one hundred and fifty dollars ($150.00) per month;
49 Apartment No. 125, unfurnished, sixty-five dollars ($65.00) per month;
Apartment No. 126, unfurnished, forty-seven dollars and fifty cents ($47.50) per month;
Apartment No. 127, unfurnished, seventy-five dollars ($75.00) per month;
Apartment No. 128, unfurnished, thirty dollars ($30.00) per month;
Apartment No. 129, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;
Apartment No. 130, unfurnished, thrity-two dollars and fifty cents ($32.50) per month;
Apartment No. 132, unfurnished, forty-seven dollars and fifty cents ($47.50) per month;
Apartment No. 132A, unfurnished, fifty-seven dollars and fifty cents ($57.50) per month;
Apartment No. 134, unfurnished, seventy-five dollars ($75.00) per month;
Apartment No. 136, unfurnished, seventy dollars ($70.00) per month;
Apartment No. 138, furnished, eighty dollars ($80.00) per month;
Apartment No. 140, unfurnished, thirty dollars ($30.00) per month;
Apartment No. 140A, unfurnished, thirty dollars ($30.00) per month;
Apartment No. 142, unfurnished, eighty-five dollars ($85.00) per month;
Apartment No. 144, unfurnished, one hundred and five dollars ($105.00) per month;
50 Apartment No. 146, unfurnished, sixty-two dollars and fifty cents ($62.50) per month;
Apartment No. 148, unfurnished, forty-five dollars ($45.00) per month;
Apartment No. 150, unfurnished, sixty-two dollars and fifty cents ($62.50) per month;
Apartment No. 154, unfurnished, sixty dollars ($60.00) per month;

Apartment No. 156, unfurnished, sixty dollars ($60.00) per month;

Apartment No. 201, unfurnished, one hundred and sixty dollars ($160.00) per month;

Apartment No. 202, furnished, one hundred and forty-two dollars and fifty cents ($142.50) per month; unfurnished $90.

Apartment No. 203, unfurnished, seventy dollars ($70.00) per month;

Apartment No. 204, unfurnished, thirty-two dollars and fifty cents ($42.50) per month;

Apartment No. 205, unfurnished, thirty-five dollars ($35.00) per month;

Apartment No. 206, unfurnished, thirty-seven dollars and fifty cents ($37.50) per month;

Apartment No. 207, unfurnished, thirty dollars ($30.00) per month;

Apartment No. 208, unfurnished, sixty dollars ($60.00) per month;

Apartment No. 209, unfurnished, eighty-five dollars ($85.00) per month;

Apartment No. 210, unfurnished, thirty-seven dollars and fifty cents ($37.50) per month;

51 Apartment No. 211, unfurnished, ninety-seven dollars and fifty cents ($97.50) per month;

Apartment No. 215, unfurnished, ninety-seven dollars and fifty cents ($97.50) per month;

Apartment No. 216, unfurnished, sixty dollars ($60.00) per month;

Apartment No. 217, unfurnished, eighty-five dollars ($85.00) per month;

Apartment No. 218, unfurnished, thirty-seven dollars and fifty cents ($37.50) per month;

Apartment No. 219, unfurnished, thirty dollars ($30.00) per month;

Apartment No. 220, unfurnished, ninety-two dollars and fifty cents ($92.50) per month;

Apartment No. 221, unfurnished, thirty-seven dollars and fifty cents ($37.50) per month;

Apartment No. 222, unfurnished, fifty-two dollars and fifty cents ($52.50) per month;

Apartment No. 223, unfurnished, eighty-two dollars and fifty cents ($82.50) per month;

Apartment No. 224, unfurnished, one hundred and fifty dollars ($150.00) per month;

Apartment No. 225, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;

Apartment No. 226, unfurnished, eighty-seven dollars and fifty cents ($87.50) per month;

Apartment No. 227, unfurnished, eighty dollars ($80.00) per month;

Apartment No. 228, unfurnished, thirty-seven dollars and fifty cents ($37.50) per month;

Apartment No. 229, unfurnished, seventy-two dollars and
52 fifty cents ($72.50) per month;

Apartment No. 230, unfurnished, sixty dollars ($60.00) per month;

Apartment No. 232, unfurnished, ninety-two dollars and fifty cents ($92.50) per month;

Apartment No. 234, unfurnished, eighty dollars ($80.00) per month;

Apartment No. 236, furnished, one hundred dollars ($100.00) per month; (amended to read $75.00 per month unfurnished.)

Apartment No. 238, furnished, one hundred and thirty-five dollars ($135.00) per month;

Apartment No. 240, unfurnished, forty-five dollars ($45.00) per month;

Apartment No. 242, unfurnished, eighty-seven dollars and fifty cents ($87.50) per month;

Apartment No. 244, unfurnished, one hundred and fifteen dollars ($115.00) per month;

Apartment No. 246, unfurnished, seventy-two dollars and fifty cents ($75.00) per month;

Apartment No. 248, unfurnished, fifty-two dollars and fifty cents ($52.50) per month;

Apartment No. 250, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;

Apartment No. 252, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;

Apartment No. 254, unfurnished, seventy dollars ($70.00) per month;

Apartment No. 256, unfurnished, seventy dollars ($70.00) per month;

53 Apartment No. 301, unfurnished, one hundred and sixty-five dollars ($165.00) per month;

Apartment No. 302, unfurnished, ninety-five dollars ($95.00) per month;

Apartment No. 303, furnished, one hundred and twenty dollars ($120.00) per month;

Apartment No. 304, unfurnished, thirty-five dollars ($35.00) per month;

Apartment No. 305, unfurnished, thirty-seven dollars and fifty cents ($37.50) per month;

Apartment No. 306, unfurnished, forty dollars ($40.00) per month;

Apartment No. 307, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;

Apartment No. 308, furnished, eighty-five dollars ($85.00) per month;

Apartment No. 309, unfurnished, eighty-five dollars ($85.00) per month;

Apartment No. 310, unfurnished, one hundred dollars ($100.00) per month;
Apartment No. 312, furnished, ninety dollars ($90.00) per month;
Apartment No. 314, furnished, ninety dollars ($90.00) per month;
Apartment No. 315, unfurnished, one hundred dollars ($100.00) per month;
Apartment No. 316, unfurnished, one hundred and thirty dollars ($130.00) per month;
Apartment No. 317, unfurnished, eighty-five dollars ($85.00) per month;
Apartment No. 318, unfurnished, forty dollars ($40.00)
54 per month;
Apartment No. 319, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;
Apartment No. 320, unfurnished, ninety-five dollars ($95.00) per month;
Apartment No. 321, unfurnished, forty dollars ($40.00) per month;
Apartment No. 322, unfurnished, sixty-five dollars ($65.00) per month;
Apartment No. 323, unfurnished, eighty-two dollars and fifty cents ($82.50) per month;
Apartment No. 324, furnished, two hundred and fifty dollars ($250.00) per month;
Apartment No. 325, unfurnished, seventy dollars ($70.00) per month;
Apartment No. 326, unfurnished, eighty-seven dollars and fifty cents ($87.50) per month;
Apartment No. 237, unfurnished, eighty dollars ($80.00) per month;
Apartment No. 328, unfurnished, thirty dollars ($30.00) per month;
Apartment No. 329, unfurnished, seventy-five dollars ($75.00) per month;
Apartment No. 330, unfurnished, sixty-two dollars and fifty cents ($62.50) per month;
Apartment No. 332, unfurnished, ninety-five dollars ($95.00) per month;
Apartment No. 334, unfurnished, eighty-five dollars ($85.00) per month;
Apartment No. 336, unfurnished, seventy-seven dollars
55 and fifty cents ($77.50) per month;
Apartment No. 338, unfurnished, one hundred and fifty dollars ($150.00) per month;
Apartment No. 340, unfurnished, fifty-five dollars ($55.00) per month;
Apartment No. 342, unfurnished, eighty-seven dollars and fifty cents ($87.50) per month;

Apartment No. 344, unfurnished, one hundred and twenty dollars ($120.00) per month;
Apartment No. 346, unfurnished, seventy-five dollars ($75.00) per month;
Apartment No. 348, unfurnished, fifty-seven dollars and fifty cents ($57.50) per month;
Apartment No. 350, unfurnished, seventy-five dollars ($75.00) per month;
Apartment No. 352, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;
Apartment No. 354, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;
Apartment No. 356, unfurnished, seventy dollars ($70.00) per month;
Apartment No. 401, unfurnished, one hundred and sixty-five dollars ($165.00) per month;
Apartment No. 402, unfurnished, ninety-five dollars ($95.00) per month;
Apartment No. 403, furnished, one hundred and twenty dollars ($120.00) per month;
Apartment No. 404, unfurnished, thirty-seven dollars and fifty cents ($37.50) per month;
Apartment No. 405, unfurnished, forty dollars ($40.00)
56 per month;
Apartment No. 406, unfurnished, forty dollars ($40.00) per month;
Apartment No. 407, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;
Apartment No. 408, furnished, eighty-seven dollars and fifty cents ($87.50) per month;
Apartment No. 409, unfurnished, eighty-five dollars ($85.00) per month;
Apartment No. 410, unfurnished, forty-two dollars and fifty cents ($42.50) per month;
Apartment No. 411, unfurnished, one hundred dollars ($100.00) per month;
Apartment No. 412, furnished, ninety-five dollars ($95.00) per month;
Apartment No. 414, furnished, ninety-five dollars ($95.00) per month;
Apartment No. 415, unfurnished, one hundred dollars ($100.00) per month;
Apartment No. 416, unfurnished, one hundred and thirty dollars ($130.00) per month;
Apartment No. 417, unfurnished, eighty-five dollars ($85.00) per month;
Apartment No. 418, unfurnished, forty-two dollars and fifty cents ($42.50) per month;
Apartment No. 419, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;

Apartment No. 420, unfurnished, ninety-five dollars ($95.00) per month;

Apartment No. 421, unfurnished, forty dollars ($40.00) per month;

57 Apartment No. 422, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;

Apartment No. 423, unfurnished, eighty-two dollars and fifty cents ($82.50) per month;

Apartment No. 424, unfurnished, one hundred and fifty dollars ($150.00) per month;

Apartment No. 425, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;

Apartment No. 426, unfurnished, eighty-seven dollars and fifty cents ($87.50) per month;

Apartment No. 427, unfurnished, eighty dollars ($80.00) per month;

Apartment No. 428, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;

Apartment No. 429, unfurnished, seventy-five dollars ($75.00) per per month;

Apartment No. 430, unfurnished, sixty-five dollars ($65.00) per month;

Apartment No. 432, unfurnished, ninety-five dollars ($95.00) per month;

Apartment No. 434, unfurnished, eighty-seven dollars and fifty cents ($87.50) per month;

Apartment No. 436, unfurnished, eighty dollars ($80.00) per month;

Apartment No. 438, unfurnished, ninety-five dollars ($95.00) per month;

Apartment No. 440, unfurnished, fifty-seven dollars and fifty cents ($57.50) per month;

Apartment No. 442, unfurnished, eighty-seven dollars and fifty cents ($87.50) per month;

58 Apartment No. 444, unfurnished, one hundred and twenty-five dollars ($125.00) per month;

Apartment No. 446, unfurnished, seventy-five dollars ($75.00) per month;

Apartment No. 448, unfurnished, sixty dollars ($60.00) per month;

Apartment No. 450, unfurnished, seventy-five dollars ($75.00) per month;

Apartment No. 453, unfurnished, seventy dollars ($70.00) per month;

Apartment No. 454, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;

Apartment No. 456, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;

Apartment No. 501, unfurnished, one hundred and sixty-five dollars ($165.00) per month;

Apartment No. 502, unfurnished, ninety-five dollars ($95.00) per month;
Apartment No. 503, unfurnished, seventy dollars ($70.00) per month;
Apartment No. 504, unfurnished, thirty-seven dollars and fifty cents ($38.50) per month;
Apartment No. 505, unfurnished, forty dollars ($40.00) per month;
Apartment No. 507, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;
Apartment No. 508, furnished, eighty-seven dollars and fifty cents ($87.50) per month;
Apartment No. 509, unfurnished, eighty-five dollars ($85.00) per month;
Apartment No. 510, unfurnished, forty-two dollars and fifty cents ($42.50) per month;
59 Apartment No. 511, furnished, one hundred and sixty-five dollars ($165.00) per month; (amended to read unfurnished $100.00 per month.)
Apartment No. 512, furnished, one hundred dollars ($100.00) per month;
Apartment No. 514, furnished, one hundred dollars ($100.00) per month;
Apartment No .515, unfurnished, one hundred dollars ($100.00) per month;
Apartment No. 516, unfurnished, one hundred and thirty dollars ($130.00) per month;
Apartment No. 517, unfurnished, eighty-five dollars ($85.00) per month;
Apartment No. 518, unfurnished, forty-two dollars and fifty cents ($42.50) per month;
Apartment No. 519, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;
Apartment No. 520, unfurnished, ninety-five dollars ($95.00) per month;
Apartment No. 521, unfurnished, forty dollars ($40.00) per month;
Apartment No. 522, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;
Apartment No. 523, unfurnished, eighty-two dolars and fifty cents ($82.50) per month;
Apartment No. 524, unfurnished, one hundred and fifty dollars ($150.00) per month;
Apartment No. 525, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;
Apartment No. 526, unfurnished, eighty-seven dollars and
60 fifty cents ($87.50) per month;
Apartment No. 527, unfurnished, eighty dollars ($80.00) per month;
Apartment No. 528, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;

Apartment No. 529, unfurnished, seventy-five dollars ($75.00) per month;

Apartment No. 530, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;

Apartment No. 532, unfurnished, ninety-five dollars ($95.00) per month;

Apartment No. 534, unfurnished, ninety dollars ($90.00) per month;

Apartment No. 536, unfurnished, eighty-two dollars and fifty cents ($85.50) per month;

Apartment No. 538, unfurnished, ninety-five dollars ($95.00) per month;

Apartment No. 540, unfurnished, sixty dollars ($60.00) per month;

Apartment No. 542, unfurnished, eighty-seven dollars and fifty cents ($87.50) per month;

Apartment No. 544, unfurnished, one hundred and twenty-seven dollars and fifty cents ($127.50) per month;

Apartment No. 546, unfurnished, seventy-five dollars ($75.00) per month;

Apartment No. 548, unfurnished, sixty-two dollars and fifty cents ($62.50) per month;

Apartment No. 550, unfurnished, seventy-five dollars ($75.00) per month;

Apartment No. 552, unfurnished, seventy dollars ($70.00) per month;

61 Apartment No. 554, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;

Apartment No. 556, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;

Apartment No. 601, unfurnished, one hundred and sixty-five dollars ($165.00) per month;

Apartment No. 602, unfurnished, ninety-five dollars ($95.00) per month;

Apartment No. 603, furnished, one hundred and twenty dollars ($120.00) per month;

Apartment No. 604, unfurnished, thirty-seven dollars and fifty cents ($37.50) per month;

Apartment No. 605, unfurnished, forty dollars ($40.00) per month;

Apartment No. 606, unfurnished, forty dollars ($40.00) per month;

Apartment No. 607, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;

Apartment No. 608, furnished, ninety dollars ($90.00) per month;

Apartment No. 609, unfurnished, eighty-five dollars ($85.00) per month;

Apartment No. 610, unfurnished, forty-two dollars and fifty cents ($42.50) per month;

Apartment No. 611, unfurnished, one hundred dollars ($100.00) per month;

Apartment No. 612, furnished, one hundred dollars ($100.00) per month;

Apartment No. 613, furnished, one hundred dollars ($100.00) per month;

Apartment No. 614, furnished, one hundred dollars
62 ($100.00) per month;

Apartment No. 615, unfurnished, one hundred dollars ($100.00) per month;

Apartment No. 616, unfurnished, one hundred and thirty dollars ($130.00) per month;

Apartment No. 617, unfurnished, eighty-five dollars ($185.00) per month;

Apartment No. 618, unfurnished, forty-two dollars and fifty cents ($42.50) per month;

Apartment No. 619, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;

Apartment No. 620, unfurnished, ninety-five dollars ($95.00) per month;

Apartment No. 621, unfurnished, forty dollars ($40.00) per month;

Apartment No. 622, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;

Apartment No. 623, unfurnished, eighty-two dollars and fifty cents ($82.50) per month;

Apartment No. 624, unfurnished, one hundred and fifty dollars ($150.00) per month;

Apartment No. 625, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;

Apartment No. 625, unfurnished, eighty-seven dollars and fifty cents ($87.50) per month;

Apartment No. 627, unfurnished, eighty dollars ($80.00) per month;

Apartment No. 628, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;

Apartment No. 629, unfurnished, seventy-five dollars ($75.00) per month;

63 Apartment No. 630, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;

Apartment No. 632, unfurnished, ninety-five dollars ($95.00) per month;

Apartment No. 634, unfurnished, ninety dollars ($90.00) per month;

Apartment No. 636, unfurnished, eighty-five dollars ($85.00) per month;

Apartment No. 638, unfurnished, ninety-five dollars ($95.00) per month;

Apartment No. 640, unfurnished, sixty-two dollars and fifty cents ($62.50) per month;

Apartment No. 642, unfurnished, eighty-seven dollars and fifty cents ($87.50) per month;

Apartment No. 644, unfurnished, one hundred and thirty dollars ($130.00) per month;

Apartment No. 646, unfurnished, seventy-five dollars ($75.00) per month;

Apartment No. 648, unfurnished, sixty-five dollars ($65.00) per month;

Apartment No. 650, unfurnished, seventy-five dollars ($75.00) per month;

Apartment No. 652, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;

Apartment No. 654, unfurnished,- seventy-two dollars and fifty cents ($72.50) per month;

Apartment No. 656, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;

Apartment No. 701, unfurnished, one hundred and sixty-five dollars ($165.00) per month;

64 Apartment No. 702, unfurnished, ninety-five dollars ($95.00) per month;

Apartment No. 704, unfurnished, thirty-seven dollars and fifty cents ($37.50) per month;

Apartment No. 705, unfurnished, forty dollars ($40.00) per month;

Apartment No. 706, unfurnished, forty dollars ($40.00) per month;

Apartment No. 707, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;

Apartment No. 709, unfurnished, eighty-five dollars ($85.00) per month;

Apartment No. 710, unfurnished, forty-two dollars and fifty cents ($42.50) per month;

Apartment No. 711, unfurnished, one hundred dollars ($100.00) per month;

Apartment No. 712, furnished, one hundred dollars ($100.00) per month;

Apartment No. 714, furnished, one hundred dollars ($100.00) per month;

Apartment No. 715, unfurnished, one hundred dollars ($100.00) per month;

Apartment No. 716, unfurnished, one hundred and thirty dollars ($130.00) per month;

Apartment No. 717, unfurnished, eighty-five dollars ($85.00) per month;

Apartment No. 718, unfurnished, forty-two dollars and fifty cents ($42.50) per month;

Apartment No. 719, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;

65 Apartments Nos. 720, and 724, and 726, unfurnished, three hundred and twenty-five dollars ($325.00) per month;

Apartment No. 721, unfurnished, forty dollars ($40.00) per month;
Apartment No. 722, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;
Apartment No. 723, unfurnished, eighty-two dollars and fifty cents ($82.50) per month;
Apartment No. 725, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;
Apartment No. 727, unfurnished, eighty dollars ($80.00) per month;
Apartment No. 728, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;
Apartment No. 729, unfurnished, seventy-five dollars ($75.00) per month;
Apartment No. 730, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;
Apartment No. 732, unfurnished, ninety-five dollars ($95.00) per month;
Apartment No. 734, unfurnished, ninety dollars ($90.00) per month;
Apartment No. 736, unfurnished, eighty-seven dollars and fifty cents ($87.50) per month;
Apartment No. 738, unfurnished, ninety-five dollars ($95.00) per month;
Apartment No. 740, unfurnished, sixty-five dollars ($65.00) per month;
Apartment No. 742, unfurnished, eighty-seven dollars and fifty cents ($87.50) per month;
66 Apartment No. 744, unfurnished, one hundred and thirty dollars;
Apartment No. 746, unfurnished, seventy-five dollars ($75.00) per month;
Apartment No. 748, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;
Apartment No. 750, unfurnished, seventy-five dollars ($75.00) per month;
Apartment No. 752, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;
Apartment No. 754, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;
Apartment No. 756, unfurnished, seventy-two dollars and fifty cents ($72.50) per month;
Apartment No. 801, unfurnished, one hundred and sixty dollars ($160.00) per month;
Apartment No. 802, unfurnished, ninety dollars ($90.00) per month;
Apartment No. 803, unfurnished, one hundred and fifteen dollars ($115.00) per month;
Apartment No. 804, unfurnished, thirty-two dollars and fifty cents ($32.50) per month;

Apartment No. 805, unfurnished, thirty-five dollars ($35.00) per month;

Apartment No. 806, unfurnished, thirty-five dollars ($35.00) per month;

Apartment No. 807, unfurnished, thirty dollars ($30.00) per month;

Apartment No. 808, furnished, eighty-five dollars ($85.00) per month;

67 Apartment No. 810, unfurnished, thirty-seven dollars and fifty cents ($37.50) per month;

Apartment No. 811, unfurnished, ninety-five dollars ($95.00) per month;

Apartment No. 812, furnished, ninety-five dollars ($95.00) per month;

Apartment No. 814, furnished, ninety-five dollars ($95.00) per month;

Apartment No. 815, unfurnished, ninety-five dollars ($95.00) per month;

Apartment No. 816, unfurnished, one hundred and twenty-five dollars ($125.00) per month;

Apartment No. 817, unfurnished, eighty dollars ($80.00) per month;

Apartment No. 818, unfurnished, thirty-seven dollars and fifty cents ($37.50) per month;

Apartment No. 819, unfurnished, thirty dollars $(30.00) per month;

Apartment No. 820, unfurnished, ninety dollars ($90.00) per month;

Apartment No. 821, unfurnished, thirty-five dollars ($35.00) per month;

Apartment No. 822, unfurnished, sixty-two dollars and fifty cents ($62.50) per month;

Apartment No. 823, unfurnished, seventy-seven dollars and fifty cents ($77.50) per month;

Apartment No. 824, unfurnished, one hundred and forty-five dollars ($145.00) per month;

Apartment No. 825, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;

68 Apartment No. 826, unfurnished, eighty-two dollars and fifty cents ($82.50) per month;

Apartment No. 827, unfurnished, seventy-five dollars ($75.00) per month;

Apartment No. 828, unfurnished, thirty dollars ($30.00) per month;

Apartment No. 829, unfurnished, seventy dollars ($70.00) per month;

Apartment No. 830, unfurnished, sixty-two dollars and fifty cents ($62.50) per month;

Apartment No. 832, unfurnished, ninety dollars ($90.00) per month;

Apartment No. 834, unfurnished, eighty-five dollars ($85.00) per month;

Apartment No. 836, unfurnished, eighty-two dollars and fifty cents ($82.50) per month;

Apartment No. 838, unfurnished, ninety dollars ($90.00) per month;

Apartment No. 840, unfurnished, sixty dollars ($60.00) per month;

Apartment No. 842, unfurnished, eighty-two dollars and fifty cents ($82.50) per month;

ApartmentNo. 844, unfurnished, one hundred and twenty-five dollars ($125.00) per month;

Apartment No. 846, unfurnished, seventy dollars ($70.00) per month;

Apartment No. 848, unfurnished, sixty-two dollars and fifty cents ($62.50) per month;

Apartment No. 850, unfurnished, seventy dollars ($70.00) per month;

Apartment No. 852, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;

69 Apartment No. 854, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;

Apartment No. 856, unfurnished, sixty-seven dollars and fifty cents ($67.50) per month;

The tailor shop on the first floor of said apartment house, one hundred and fifty dollars ($150.00) per month; and

The space on the first floor of said apartment house, now used as a cafe, two hundred and fifty dollars ($250.00) per month.

Finding of Facts.

Upon consideration of the evidence aforesaid, the Commission further finds, as a basis of this determination, the following facts:

1. That the fair and reasonable value of the whole property above mentioned, is two million dollars ($2,000,000.00).

2. That the allowance for maintenance, repairs, taxes, service, and all other expenses connected with the said property, is one hundred and thirty thousand dollars ($130,000.00) per annum.

3. That the Commission's estimated net return to the owner of said property, upon the value as fixed by it, is eight and eight-tenths per cent (8.8%).

By the Commission:

A. LEFTWICH SINCLAIR,
CLARA SEARS TAYLOR,
WM. F. GUDE,
Commissioners."

70 PETITIONER'S EXHIBIT NO. 6.

Filed October 27, 1922. Morgan H. Beach, Clerk.

The Chastleton Form.

This lease made this — day of ——, in the year 192–, by and between The F. H. Smith Company, a corporation, Agent for Felix Lake, Owner, party of the first part, hereinafter called the lessor, and —— ——, party of the second part, hereinafter called the lessee.

Witnesseth. That the lessor leases to the lessee the premises known as Apartment No. — on the — Floor in The Chastleton, situate at the Northeast corner of Sixteenth and "R" Streets, Northwest, Washington, D. C., for a term of — months, commencing on the — day of ——, 192–, for the sum of — dollars payable in advance in monthly instalments of — dollars, at the office of the lessor, Washington, D. C., the first payment of — dollars to be made on the — day of ——, 192–, and a like sum on the — day of each and every month thereafter.

The lessee hereby covenants and agrees that — will not sublease the said premises without the consent in writing of said lessor, and will not attempt to assign this lease or — rights hereunder without such written consent; that he will not use the said premises for any unlawful purpose; or exhibit any placard on any part thereof; nor hang, nor allow to be hung, any clothes or other articles on the outside of the premises nor make nor permit to be made, any

71 disturbance, noise, or annoyance whatsoever, detrimental to the premises, or to the comfort of the other inhabitants of said building; nor permit to be done any act or thing which may be to the annoyance, damage, or disturbance of the lessor or its tenants in said building, or to the occupants thereof; and will not allow any person or persons or children under — control to loiter or play in the passages, landing or stairs of the said building, and shall not use the same in any way except for the purpose of ingress or egress; nor keep or allow to be kept any dogs, cats, parrots, graphophone or phonograph in said apartment, or upon said premises; that he will pay the rent as above stated, and all bills for gas and electric light used in said apartment, making the necessary deposit at the gas and electric light office to secure the same; that all repairs rendered necessary by the negligence of the lessee shall be paid for by ——, and that he will surrender the same at the expiration of — tenancy in good condition, ordinary wear and tear and damage by the elements excepted, together with the awnings, window screens, or other improvements, now or at any time during the said term to be fixed or fastened to said premises, or any part thereof under the control of said lessee.

The lessee further agrees that if any installment of rent shall not be paid when the same shall become due and payable, as hereinbefore provided (whether demand shall have been made for same or

not) or if — shall in any other respect violate any of the conditions and covenants contained in this agreement, then it shall be
72 lawful for the said party of the first part, his successors and assigns, to recover possession of the said premises by reason of a seven days' summons under the provisions of the Code of Law of the District of Columbia regulating proceedings between landlords and tenants, or by such legal process as may at the time be in operation in like cases, the said lessee hereby expressly waiving all right to any other notice to quit.

And it is further provided, that if under the provisions of this lease and agreement a seven days' summons shall be served, and a compromise or settlement shall be made; either before or after judgment, whereby the said lessee shall be allowed to retain said premises such proceedings shall not constitute a waiver of any covenant herein contained or the lease itself.

And it is further provided and agreed, between the parties hereto that the lessor or its duly authorized agents may enter said premises or apartments at any reasonable hour to make any necessary repairs, or to protect the same against the elements, and they may also enter said premises at any reasonable hour of any day after the 15th day of September to remove the awnings from any windows having the same.

And it is further agreed, that no waiver of one breach of any covenant herein shall be construed to be a waiver of the covenant itself, or of any subsequent breach thereof.

And it is further agreed, that the covenants herein shall bind the successors or assigns of the lessor and as well the heirs, executors or administrators of the lessee, also shall bind the sub-lessee or
73 assignee of the lessee in case of a proper subletting or assignment according to the terms of this lease.

And the lessee further agrees, that all servants under — control will enter and leave the building by the servants' entrance and that all doors leading from the kitchen to main hall shall be kept closed.

This lease does not cover store room privileges or rights, but in the event the lessor shall voluntarily furnish such, the lessee hereby agrees to hold the said lessor harmless for loss, destruction, theft, or injury to any of the les-ee's property placed therein.

.....
.....
.....
.....
.....
.....

In testimony whereof the parties hereto have signed their names and affixed their seals the day and year first hereinbefore written.

THE F. H. SMITH COMPANY,
Agent for the Owner,

By —— ——, [SEAL.]
Assistant Secretary.

Witnessed by:
—— ——.

74 PETITIONER'S EXHIBIT No. 6.

Filed October 27, 1922. Morgan H. Beach, Clerk.

The Chastleton Form.

This lease made this — day of ——, in the year 192–, by and between The F. H. Smith Company, a corporation, Agent for District Apartment Corporation, Owner, party of the first part, hereinafter called the lessor, and —— ——, party of the second part, hereinafter called the lessee.

Witnesseth, That the lessor leases to the lessee the premises known as Apartment No. — on the — Floor in The Chastleton, situate at the Northeast corner of Sixteenth and "R" Streets, Northwest, Washington, D. C., for a term of — months, commencing on the — day of ——, 192–, for the sum of — dollars, payable in advance in monthly installments of — dollars, at the office of the lessor, Washington, D. C., the first payment of — dollars to be made on the — day of ——, 192–, and a like sum on the — day of each and every month thereafter.

The lessee hereby covenants and agrees that — *will not sublease the said premises without the consent in writing of said lessor, and will not attempt to assign this lease or — rights hereunder without such written consent;* that he will not use the said premises for any unlawful purpose; or exhibit any placard on any part thereof; nor hang, nor allow to be hung, any clothes or other articles on the outside of the premises nor make nor permit to be made,
75 any disturbance, noise, or annoyance whatsoever, detrimental to the premises, or to the comfort of the other inhabitants of said building; nor permit to be done any act or thing which may be to the annoyance, damage, or disturbance of the lessor or its tenants in said building, or to the occupants thereof; and will not allow any person or persons or children under — control to loiter or play in the passages, landing of stairs of the said building, and shall not use the same in any way except for the purpose of ingress or egress; nor keep or allow to be kept any dogs, cats, parrots, graphophone or phonograph in said apartment, or upon said premises; that he will pay the rent as above stated, and all bills for gas and electric light used in said apartment, making the necessary deposit at the gas and electric light office to secure the same; that all repairs rendered necessary by the negligence of the lessee shall be paid for by —, and that he will surrender the same at the expiration of — tenancy in good condition, ordinary wear and tear and damage by the elements excepted, together with the awnings, window screens, or other improvements, now or at any time during the said term to be fixed or fastened to said premises, or any part thereof under the control of said lessee.

The lessee further agrees that if any installment of rent shall not be paid when the same shall become due and payable, as hereinbefore provided (whether demand shall have been made for same

or not) or if — shall in any other respect violate any of the conditions and covenants contained in this agreement, then it shall be lawful for the said party of the first part, his successors and
76 assigns, to recover possession of the said premises by reason of a seven days' summons under the provisions of the Code of Law of the District of Columbia regulating proceedings between landlords and tenants, or by such legal process as may at the time be in operation in like cases, the said lessee hereby expressly waiving all right to any other notice to quit.

And it is further provided, that if under the provisions of this lease and agreement a seven days' summons shall be served, and a compromise or settlement shall be made; either before or after judgment, whereby the said lessee shall be allowed to retain said premises, such proceedings shall not constitute a waiver of any covenant herein contained or the lease itself.

And it is further provided and agreed, between the parties hereto that the lessor or its duly authorized agents may enter said premises or apartments at any reasonable hour to make any necessary repairs, or to protect the same against the elements, and they may also enter said premises at any reasonable hour of any day after the 15th day of September to remove the awnings from any windows having the same.

And it is further agreed, that no waiver of one breach of any covenant herein shall be construed to be a waiver of the covenant itself, or of any subsequent breach thereof.

And it is further agreed, that the covenants herein shall bind the successors or assigns of the lessor and as well the heirs, executors or administrators of the lessee, also shall bind the sub-lessee or assignee of the lessee in case of a proper subletting or assignment according to the terms of this lease.

77 And the lessee further agrees, that all servants under — control will enter and leave the building by the servants entrance, and that all doors leading from the kitchen to main hall shall be kept closed.

This lease does not cover store room privileges or rights, but in the event the lessor shall voluntarily furnish such, the lessee hereby agrees to hold the said lessor harmless for loss, destruction, theft, or injury to any of the lessee's property placed therein.

. . . . . .
. . . . . .
. . . . . .
. . . . . .
. . . . . .
. . . . . .

In testimony whereof, the parties hereto have signed their names and affixed their seals the day and year first hereinbefore written.

THE F. H. SMITH COMPANY,
Agent for the Owner.

By —— ——, [SEAL.]
Assistant Secretary.

Witnessed by: —— ——.

78 PETITIONER'S EXHIBIT NO. 7.

Exact Copy of Transcript of Record Pages, 164-167 *Inclusive.*

By the Chairman:

Q. Mr. Norman, in testifying before the Commission here in reference to this Chastleton Apartment House, have you presented the advantages of that property and described its condition and pointed out its value just as you did to the purchaser of the property named in this contract of sale which was submitted yesterday? A. I did not go into any detailed figures such as I have given you there.

Q. Now in what respect would your presentation of the matter to that prospective purchaser differ from the way you presented the matter to the Commission from the witness stand? A. My presentation to the purchaser was in a general way—the desirability of the property. I cannot tell you exactly the words that I used to them, in fact, I did not have to use a great many words, because they came over here and looked for themselves. They are familiar with Washington and it did not take much argument to satisfy them that it was one of the best and most desirable properties in the city.

Q. Now, state whether the purchaser named in this contract of sale is a resident or non-resident of the District of Columbia? A. Non-resident.

Q. When were you last authorized to sell the Chastleton Apartment House and by whom were you authorized to sell it? A. I cannot give you the date when I was authorized to sell it, but I was
79 authorized to enter into negotiations by Mr. Felix Lake.

Q. When? A. I cannot tell you that?

Q. You have no idea when? A. Within the last six months, as far as that is concerned. I started negotiations after he bought the property before he got title in the first transaction.

Q. Can you tell us during what month you were definitely authorized to proceed with your efforts to sell this property? A. With these present people? I stated that before, in November.

Q. Some time in November? A. November, yes, sir.

By Mr. Gardiner:

Q. Now, he said these present people. You asked him when he first got it and he said, "You mean the present people" and then he stated in November.

The Witness: The sale that I made to these out of town people is what you asked me, was it not?

The Chairman: Yes.

The Witness: When was I authorized to begin negotiations with those people?

By the Chairman:

Q. No. When did you get authority last from Mr. Lake to sell this property? I am assuming that you have got general authority to sell it to anybody; not to sell it to any particular persons who might want to buy. A. Well, I got authority from Mr. Lake to negotiate with these people along certain lines in November of last year, 1921.

80 Q. Then as I understand it, you started the negotiations which culminated in the signing of this contract which is in evidence? A. That is true.

Q. Dated January 27, 1922. A. Yes, that is true.

Q. Now, I understood you to say that you took the proposed purchaser of the property to the apartment house. A. That is true.

Q. To what extent was the property inspected? A. They went in several of the apartments and looked over the building in general. They did not go down into the engine room or see any of the machinery. They were asked if they wanted to see that and they said no.

Q. Now, can you recall approximately the time when that inspection was made?

By Mr. Gardiner:

Q. With reference to the date of the contract I assume you want?
The Chairman: Yes.
A. I cannot give you that definitely, Mr. Chairman.

By the Chairman:

Q. But it was some time between November and January, wasn't it? A. Oh, I was going to say that I could give it very closely. It was, I think, between the first and the fifteenth of January that the parties were here and made the inspection. They stated that they had some business in New York and that it would take them a few days and they would take the matter up when they returned.

81 Q. Well, it was after Christmas? A. Oh, yes, it was in this year.

Q. What time in November did you see Mr. Lake and get this authority to conduct these negotiations? A. I couldn't answer that.

Q. You cannot say what time? A. No.

Q. You said in November, but you cannot say what part of November? A. I cannot give you any particular date, no.

Q. What enables you to say that it was in November? A. I cannot tell you that. I just told you I did not remember.

Q. You remembered that it was in November. A. Well, before you asked me to fix the date, and I didn't know.

Q. What enables you to fix November as the month during which you received this authority from Mr. Lake? A. Why, that is because when I started the negotiations, I naturally would not start the negotiations on property belonging to some one else until I had first consulted the owner.

Q. Yes. Now, did Mr. Lake tell you, when he gave you that authority that there was a proceeding pending; that the Rent Commission had called upon him for information about this apartment house? A. He did not.

Q. He did not? A. No, sir.

Q. Did you know at the time you were conducting these negotiations that the persons whose names are signed to this contract,
82 knew what rents were being received for the apartments in the building? A. I had a statement that was furnished me by Mr. Lake's agents.

Q. A statement of the gross rentals? A. It was an itemized statement of each apartment.

Q. Of each apartment? A. Yes, sir.

Q. Do you remember what the gross rentals amounted to? A. $390,460.

Q. Per year? A. Yes, sir. The unfurnished apartments averaged $33.81 per room.

Q. Did you show that information to the proposed purchaser? A. I did.

Q. To what extent, in your judgment, was the sale influenced by the amount of rent being received for the property sold? A. I could not tell you that. They sent their auditors down here and looked into that for themselves. I took no responsibility at all.

83 *Notice of Hearing.*

Filed October 30, 1922.

* * * * * * *

To Chapin Brown, Esq., attorney for Rent Commission, and Robert McNeil, Esq., attorney for defendants tenants:

Please take notice that Mr. Justice Siddons has set Saturday, the 4th day of November, 1922, at 10 a. m. as the time and day to hear and consider the questions of law raised in the petition in the above entitled cause and to hear and determine whether or not the temporary relief ask- for by said petition in said petition be granted.

W. GWYNN GARDINER.

84 *Motion of Defendant Robert H. McNeill to Dismiss Petition.*

Filed October 31, 1922.

* * * * * * *

And now comes Robert H. McNeil, one of the defendants in the above entitled cause, and moves the Court to dismiss the petition filed in the above entitled cause for want of equity in the petition, and for want of jurisdiction in the Court to grant the relief prayed for in the said petition of the petitioners, and for other reasons appearing on the face of the petition.

ROBERT H. McNEILL,
Defendant.

To W. Gwynne Gardiner, Esq.,
Attorney for Petitioners,
Woodward Building,
Washington, D. C.:

Please take notice that the above motion will be called to the attention of the Court on Saturday, the 4th day of November, 1922, at ten (10) o'clock A. M. or as soon thereafter as counsel can be heard.

ROBERT H. McNEILL,
Defendant.

Service of a copy of the above motion is acknowledged this 31st day of October, 1922.

W. GWYNN GARDINER,
Atty. for Petitioners.

85 *Motion to Strike from Pleadings Certain Language as Scandalous.*

Filed November 4, 1922.

* * * * * * *

And now come the above named defendants, A. Leftwich Sinclair, Clara Sears Taylor, and William F. Gude, the Rent Commissioners of the District of Columbia, and composing the Rent Commission of the District of Columbia, and move the Court to strike from the pleadings and the records of the above entitled case, those parts of the affidavit hereinafter quoted of one Edward E. Perry, filed in the above entitled case on the 31st day of October, 1922, for the reason, and upon the ground that the said language (hereinafter quoted) is scandalous. The language which it is moved to strike from the pleadings and the record is as follows:

"It if (is) my opinion that if the public had confidence in the Rent Commission or if the Rent Commission *was* (was) not in existence, there would be hundreds and hundreds of houses of all kinds and classes in the District of Columbia with the rent sign upon them and offered to the public for rent at very reasonable prices. Due to the present feeling against the Rent Commission and the generally prevailing opinion among landlords in Washington that they will not be accorded justice by the Rent Commission, there are hundreds of houses being withdrawn from the rental lists and offered for sale with the result that the renting public who desire houses rather than apartments are forced to purchase homes, when otherewise, without the Rent Commission, they would be on the market for rent."

CHAPIN BROWN,
CHAPIN BROWN,
Attorney for the Rent Commission of the District of Columbia.

86 To W. Gwynn Gardner, Esq.,
Attorney for the Petitioners,
Woodward Building,
Washington, D. C.:

Please take notice that the foregoing motion will be called to the attention of the Court, Mr. Justice Siddons, at 10 o'clock A. M., Saturday, November 4, 1922, or as soon thereafter as counsel can be heard.

CHAPIN BROWN.
CHAPIN BROWN,
Attorney for the Rent Commission of the District of Columbia.

Service of a copy of the foregoing motion and notice acknowledged this 1st day of November, 1922.

W. GWYNN GARDINER,
Pr. J. W. T.,
Attorney for Petitioners.

NOTE.—*Authorities.*—See: Case of Tolman vs. Tolman, 1 App. D. C. 299 at 311, and the case of Davidge vs. Simmons, 49 App. D. C. 398, at 400.

The last cited case is for language used against the opposite Counsel. How much stronger is the reason for striking out the language used against a legal tribunal such as The Rent Commission.

87 *Memorandum of Court.*

Filed November 10, 1922.

* * * * * * *

Hearing on motion for temporary restraining order.

The prayer of the Bill is for an order to enjoin and restrain the defendants and each of them from attempting in anywise to enforce the terms of an order of the defendant Rent Commission entered August 15, 1922.

That order of the Commission made reductions of rents of apartments in the building known as the Chastleton Apartments, such reductions to be effective as of March 1, 1922. The order was appealed from, and the appeal perfected within the necessary ten days from August 15, 1922, the appeal, under the law, being to this Court in General Term.

None of the plaintiffs owned the property at the time of the Commission's order or the appeal therefrom, and the plaintiff Hahn did not become the owner of the property until at least a month after the appeal from the Rent Commission had been perfected, and the plaintiff Corporation at a still later period.

Lake had owned the property, being the owner on January 25,

1922, when the Rent Commission instituted the proceedings of which complaint is made, its notice of them running to Lake's rental agents of the property, The F. H. Smith Company.

A few days later a Mrs. du Pont offered to purchase the property, which offer Lake accepted on February 2, 1922. On February 14, 1922, Lake's agents sought a continuance of the proceeding before the Commission, which apparently was granted, as the hearings in the case did not begin until April 4, 1922. On March 27,
88 1922, the sale to Mrs. du Pont was consummated, and all leases, tenancy agreements, etc., were delivered by Lake's rental agents to the agent of the purchaser, and therefore Lake did not, according to the allegations of the Bill of Complaint, "take any action or steps to protect himself against such proceedings". His rental agents remained the defendants in the proceedings and it is on their appeal that these are now pending.

In the opinion of the Court, no facts are alleged, nor principles of law invoked, that entitle the plaintiffs to the restraining order they have applied for, in the light of the facts mentioned above and which are set out in the Bill.

The contentions of the unconstitutionality of the law under which the defendant Commission has assumed to act in this case, are reserved for the Appellate tribunals to deal with, in view of the recent decision of the Supreme Court in the case of Block vs. Hirsh, 256 U. S. 135.

The motion for the restraining order must be denied.

F. L. SIDDONS,
Justice.

November 10, 1922.

89 *Order Denying Restraining Order and Dismissing Bill.*

Filed November 16, 1922.

* * * * * * *

This cause came on for hearing upon the motion of the petitioners for a restraining order, and also upon the motion of the defendant, Robert H. McNeill, to dismiss for want of equity in the bill, and was fully argued by counsel for the petitioners and by counsel for the Rent Commission upon the motion for a restraining order, and by the defendant Robert H. McNeill, on the motion to dismiss, and was considered by the Court. Whereupon, it is, this 16th day of November, 1922, by the Court,

Adjudged, Ordered, and Decreed, that the motion for a restraining order be, and the same is hereby denied, and upon consideration of the said motion to dismiss, it is ordered that the same be, and it is hereby granted, and the sail bill is hereby dismissed as to all defendants, with costs against the petitioners.

F. L. SIDDONS,
Justice.

Consented to:

R. H. McNEILL,
For Himself, in Proper Person.

CHAPIN BROWN,
For Rent Commission.

From the above order the Complainants, in open Court, noted an appeal to the Court of Appeals whereupon cost bond on appeal was fixed at $100.00, or a cash deposit in lieu thereof of $50.00.

F. L. SIDDONS,
Justice.

90 *Assignments of Error.*

Filed November 16, 1922.

* * * * * * *

(1) The Court committed error in dismissing the bill.
(2) The Court committed error in refusing the injunctive relief prayed for in the bill.
(3) The Court committed error in refusing to hold the extension of the Rent Commission Act under the facts in this case, as void and unconstitutional.
(4) The Court committed error in holding that service upon the agent was sufficient under the act to bring the owner into court even in a case where the owner had no knowledge of the proceedings directly or indirectly.
(5) The Court committed error in holding that the statements and declarations of the Chairman of the Commission were not sufficient to disqualify him from sitting in the case.
(6) The Court committed error in holding that the Rent Commission was not prejudiced, having prejudged the case before any testimony was offered.
(7) In not holding that the action of the Rent Commission in making its order retrospective was void.

W. GWYNN GARDINER,
Attorney for Plaintiffs.

Memorandum.

November 16, 1922.—$50 deposited by plaintiffs in lieu of undertaking on appeal.

91 *Designation of Record.*

Filed November 16, 1922.

* * * * * * *

The Clerk of the Court will please prepare the following as the Transcript of Record in the above entitled cause on appeal to the Court of Appeals:
(1) Original Petition or Bill.
(2) All affidavits and exhibits filed in support thereof.
(3) Notice of hearing.
(4) Motion to dismiss.
(5) Memo. of the court denying injunctive relief.

(6) Decree of the court denying the relief and dismissing the bill.
(7) Memo. appeal noted in open court.
(8) Memo. appeal perfected and bond given.
(9) Assignments of error.
(10) This designation.

W. GWYNN GARDINER,
Attorney for Plaintiffs.

Service of copy of the above designation of record and assignments of error accepted this 16th day of November, A. D., 1922.

R. H. McNEILL,
Per E. T. H.,
Attorney for Tenants.
CHAPIN BROWN,
Attorney for Rent Commission.

92 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 91, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 40650 in Equity, wherein The Chastleton Corporation, a corporation, et al. are Petitioners and A. Leftwich Sinclair, Clara Sears Taylor and William F. Gude, Rent Commissioners of the District of Columbia and John H. Amig et al. are Respondents, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 17th day of November, 1922.

[Seal of the Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

E. W.

Endorsed on cover: District of Columbia Supreme Court. No. 3915. The Chastleton Corporation, a corp., et al., appellants, vs. A. Leftwich Sinclair et al.

IN COURT OF APPEALS

ARGUMENT OF CAUSE

Wednesday, May 2nd, A. D. 1923.

* * * * * * *

[Title omitted]

The argument in the above entitled cause was commenced by Mr. W. G. Gardiner, attorney for the appellants, and was continued by Mr. Chapin Brown, attorney for the Rent Commission, and was concluded by Mr. R. H. McNeill, attorney for the appellees.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

Before Smyth, Chief Justice; Van Orsdel, Associate Justice, and Smith, Judge U. S. Court of Customs Appeals

OPINION

Mr. Justice Van Orsdel delivered the opinion of the court.

VAN ORSDEL, *Associate Justice:*

Appellants filed a bill in equity in the Supreme Court of the District of Columbia to restrain defendants and each of them from attempting in any wise to enforce the terms of an order entered by defendant Rent Commission on August 15, 1922.

From a decree denying complainants' motion for a restraining order, and sustaining a motion of defendants to dismiss the bill for want of equity, this appeal was taken.

The order complained of readjusted and reduced rental rates on a large number of apartments in the Chastelton Apartment Building in this city. It appears, however, from the statement of the chancellor in the court below, when the decree in this case was entered, that an appeal had been taken by appellants from the order of the Commission to the general term of the Supreme Court of the District of Columbia, and that the appeal had been perfected within the necessary 10 days from the date of the order.

The bill, among other things, avers, as ground for injunction, that notice was not served by the Rent Commission upon the owner of the property, but that service was had upon the rental agents. The sufficiency of such notice to give the Rent Commission jurisdiction, is challenged. This court had occasion to fully consider this

question in a case where the facts were similar to those in the present case, and it was held that the notice upon the rental agent is sufficient to confer jurisdiction in the Commission to proceed with the adjustment of rents in the absence of the owner of the property, Tebbs vs. Union Realty Corporation, — App. D. C. —; 286 Fed. 1011.

Coming to the ground upon which the motion to dismiss, in the court below, was based, namely, want of equity, we are of opinion that all the questions raised by the bill can be preserved and presented on appeal, and that appellants are furnished such a complete and adequate remedy at law as to forbid recourse to equity.

The constitutionality of the present Rent Law, 42 Stats. L. 543, is assailed in this proceeding. The constitutionality of the former rent law was sustained by the Supreme Court in the case of Block vs. Hirsh, 256 U. S. 135. Whether there are distinctions in the present law which would cause that court to change its opinion, is not for us to determine.

The decree is affirmed with costs.

Monday, June 4th, A. D. 1923.

* * * * * * *

[Title omitted]

Appeal from the Supreme Court of the District of Columbia

JUDGMENT

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per Mr. Justice Van Orsdel, June 4, 1923.

Judge James F. Smith of the U. S. Court of Customs Appeals sat in this case in the place of Mr. Justice Robb.

IN COURT OF APPEALS

Monday, July 2nd, A. D. 1923.

* * * * * * *

[Title omitted]

ORDER ALLOWING APPEAL

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is ordered by the court that said appeal be and the same is hereby allowed, and the bond to act as supersedeas is fixed at the sum of Three Hundred Dollars.

BOND ON APPEAL (for $300; to act as supersedeas; approved, Robb J. Filed July 25, 1923)

[Omitted in printing]

[File endorsement omitted.]

CITATION AND SERVICE—Filed July 25, 1923

UNITED STATES OF AMERICA, *ss:*

To A. Leftwich Sinclair, Clara Sears Taylor, and William F. Gude, Rent Commission of the District of Columbia, et al., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein The Chastleton Corporation, a corporation, and Felix Lake and Claude H. Hahn are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Charles H. Robb, Associate Justice of the Court of Appeals of the District of Columbia, this — day of July, in the year of our Lord one thousand nine hundred and twenty-three.

Chas. H. Robb, Associate Justice of the Court of Appeals of the District of Columbia.

Service accepted July 25, 1923. Chapin Brown, Atty. for the Rent Commission, D. C., appellees.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jul. 25, 1923. Henry W. Hodges, clerk.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed July 28, 1923

(1) The Court committed error in sustaining the opinion of the lower court in dismis-ing the bill of complaint.

(2) The Court committed error in declining to hold the extension of the Ball Act as unconstitutional and void.

(3) The Court committed error in declining to hold that under the decision of the Supreme Court of the United States in Block vs. Hirsh the extension of the act was unconstitutional and void.

(4) The Court committed error in refusing injunctive relief prayed for in the bill.

(5) The Court committed error in refusing to hold that service upon the rental agent was sufficient service upon the owner.

(6) The Court committed error in holding that the action of the Rent Commission in making its order retrospective was void.

(7) The Court committed error in holding that the statements and declarations of the Chairman of the Commission were not sufficient to disqualify him from sitting in the case.

W. Gwynn Gardiner, Attorney for Appellants.

[File endorsement omitted.]

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed July 28, 1923

The clerk in the preparation of the transcript of record on appeal to the Supreme Court of the United States in the above entitled cause will include the following, to wit:

1. Printed record.
2. Argument of cause.
3. Opinion.
4. Decree.
5. Order allowing appeal and fixing supersedeas bond.
6. Bond on appeal.

7. Citation with acceptance of service.

8. Assignment of errors.

9. This designation.

W. Gwynn Gardiner, Attorney for Appellants.

[File endorsement omitted.]

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

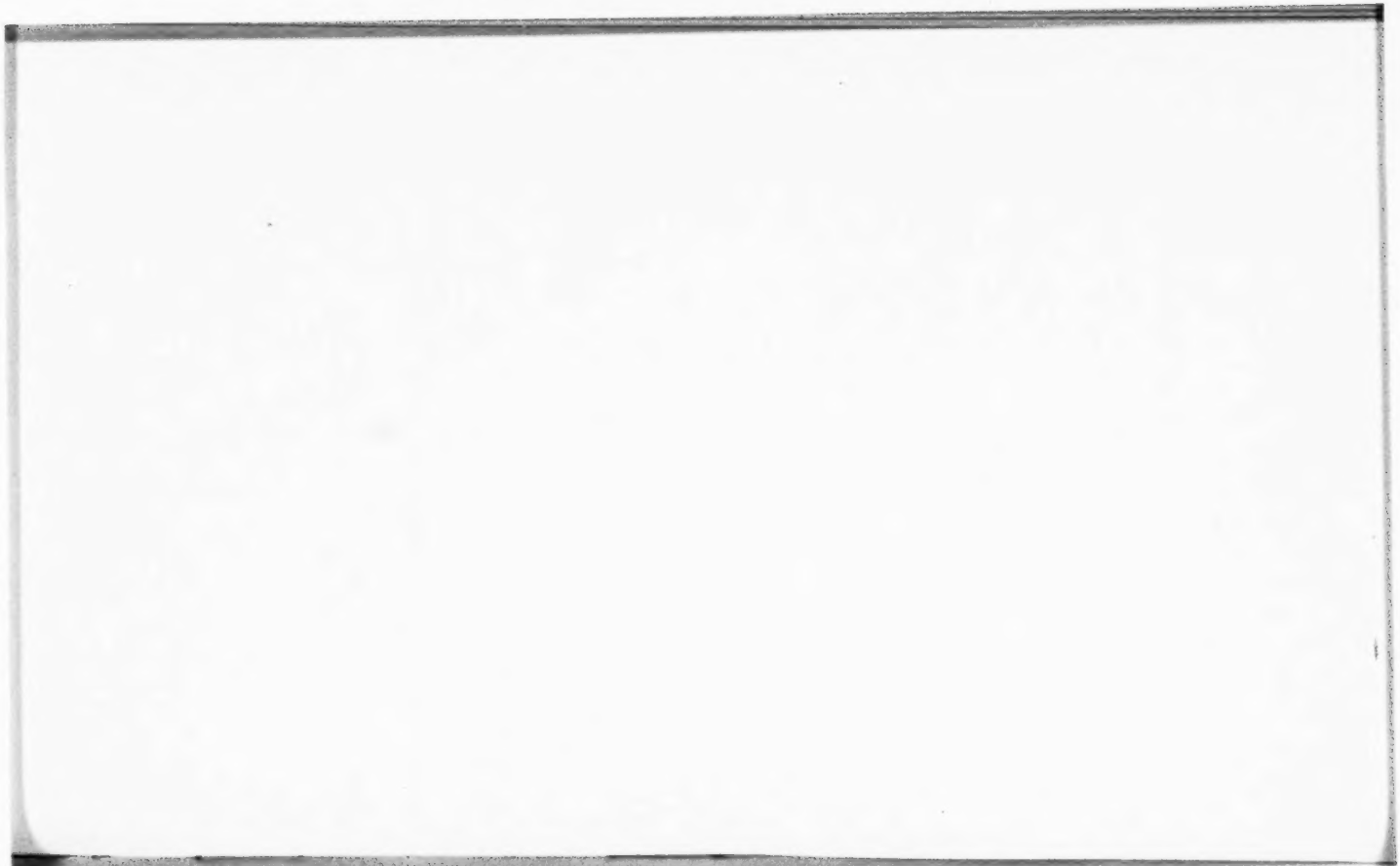
CLERK'S CERTIFICATE

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 63, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals as designated by counsel in the case of The Chastleton Corporation, a corporation, and Felix Lake and Claude H. Hahn, appellants, vs. A. Leftwich Sinclair, Clara Sears Taylor and William F. Gude; Rent Commission of the District of Columbia, et al., No. 3915, April Term, 1923, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this twenty-eighth day of July, A. D. 1923.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal of Court of Appeals, District of Columbia.)

Endorsed on cover: File No. 29,777. District of Columbia Court of Appeals. Term No. 467. The Chastleton Corporation and Felix Lake and Claude H. Hahn, appellants, vs. A. Leftwich Sinclair, Clara Sears Taylor, and William F. Gude, Rent Commission of the District of Columbia, et al. Filed July 31, 1923. File No. 29,777.



IN THE SUPREME COURT OF THE UNITED STATES

No. 467

THE CHASTLETON CORPORATION, FELIX LAKE, and CLAUDE H. HAHN, Appellants,

vs.

A. LEFTWICH SINCLAIR, CLARA SEARS TAYLOR, and WILLIAM F. GUDE, — Commissioners of the District of Columbia, et al., Appellees

STIPULATION OF COUNSEL

We, the undersigned counsel of record in the above entitled cause, do hereby stipulate and agree that the annexed printed paper, entitled "Addition to Record per Stipulation of Counsel, Court of Appeals of the District of Columbia, October Term, 1922," be made a part of the transcript of record in the above entitled cause, the same having been omitted, through error, from the transcript of record sent up to this Court, as the same was a part of the transcript of record in this cause in the Court of Appeals of the District of Columbia.

W. Gwynn Gardiner, Attorney for Appellants. Chapin Brown, Attorney for Appellees.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, OCTOBER TERM, 1922

No. 3915

THE CHASTLETON CORPORATION, a Corporation, and FELIX LAKE and CLAUDE H. HAHN, Appellants,

vs.

A. LEFTWICH SINCLAIR, CLARA SEARS TAYLOR, and WILLIAM F. GUDE, Rent Commission of the District of Columbia, et al.

ADDITION TO RECORD PER STIPULATION OF COUNSEL—Filed November 27, 1922

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 3915

THE CHASTLETON APARTMENT CORPORATION et al., Appellants,

vs.

A. LEFTWICH SINCLAIR et al., Appellees

We, the undersigned, attorneys of record and all of the attorneys of record in the above entitled cause, do hereby consent that a certain

affidavit of one Edward G. Perry, filed in the above entitled cause on the 31st day of October, 1922, the same affidavit referred to in the record on Page 50 thereof, be included in the Transcript of Record in this Court, it appearing that the said affidavit was left out of the record through an error of the clerks in the office of the Clerk of the Supreme Court of the District of Columbia.

(Signed) W. Gwynn Gardiner, For Appellants. (Signed) R. H. McNeill, (Signed) Chapin Brown, Attorney- for the Rent Commission.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Equity. No. 40650

THE CHASTLETON CORPORATION, a Corporation, and FELIX LAKE and CLAUDE H. HAHN, Petitioners.

vs.

A. LEFTWICH SINCLAIR et al., Rent Commissioners of the District of Columbia, and JOHN H. AMIG, E. M. ROSSITER, et al., Respondents

AFFIDAVIT OF E. G. PERRY—Filed October 31, 1922

I, Edward G. Perry, being first duly sworn on oath depose and state that I am the manager of the Rent Department of the F. H. Smith Company and have been so employed since —— —, ——.

The F. H. Smith Company does a very large real estate business in the City of Washington, and, in my opinion, they manage more apartment houses than any real estate firm in the city.

My knowledge, obtained from many years experience in handling apartments and the investigations which I have been carrying on during the last year and a half, in order that I might be thoroughly conversant with local rental conditions, so that I could give our clients the best possible service as rental agent, makes me at this time thoroughly conversant with every phase of the rental conditions in Washington.

Deponent further states as a fact that in August, 1922, there were under construction in the District of Columbia seventy-two apartment houses with an average capacity of thirty-four apartments to a building. About fifty of the buildings which were under construction at that time have now been completed and are now open to the renting public and are more or less occupied, although there are many vacancies in these apartments. The balance of these said apartment houses under construction in August will be completed within the next three months. There are at this time some vacancies in ninety per cent of these fifty new apartment houses, completed and now open to the public. The average rental per room in these seventy-two apartment houses is about $27.50 per month.

There are at least three hundred vacant apartments in desirable apartment houses in the District of Columbia, and as these other buildings are completed and made ready for occupancy, the number of available apartments will be greatly increased. The demand for apartments today is not as great as the number of apartments offered for rent.

It is my opinion that if the public had confidence in the Rent Commission or if the Rent Commission was not in existence, there would be hundreds and hundreds of houses of all kinds and classes in the District of Columbia with the rent sign upon them and offered to the public for rent at very reasonable prices. Due to the present feeling against the Rent Commission and the generally prevailing opinion among landlords in Washington that they will not be accorded justice by the Rent Commission, there are hundreds of houses being withdrawn from the rental lists and offered for sale with the result that the renting public who desire houses rather than apartments are forced to purchase homes, when otherwise, without the Rent Commission, they would be on the market for rent.

(Signed) Edward G. Perry.

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 31 day of October 1922.
(Signed) Flora E. Davis, Notary Public, D. C. (Seal.)

SUPREME COURT OF THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify that the foregoing is a true copy of the Affidavit of E. G. Perry, filed and of record in the case of The Chastleton Corporation, a corporation, and Felix Lake, and Claude H. Hahn, Petitioners, vs. A. Leftwich Sinclair, et al., Rent Commissioners of the District of Columbia, and John H. Amig, E. M. Rossiter, et al., Respondents, and that the same was inadvertently omitted from the transcript of record heretofore transmitted to the Court of Appeals of the District of Columbia.

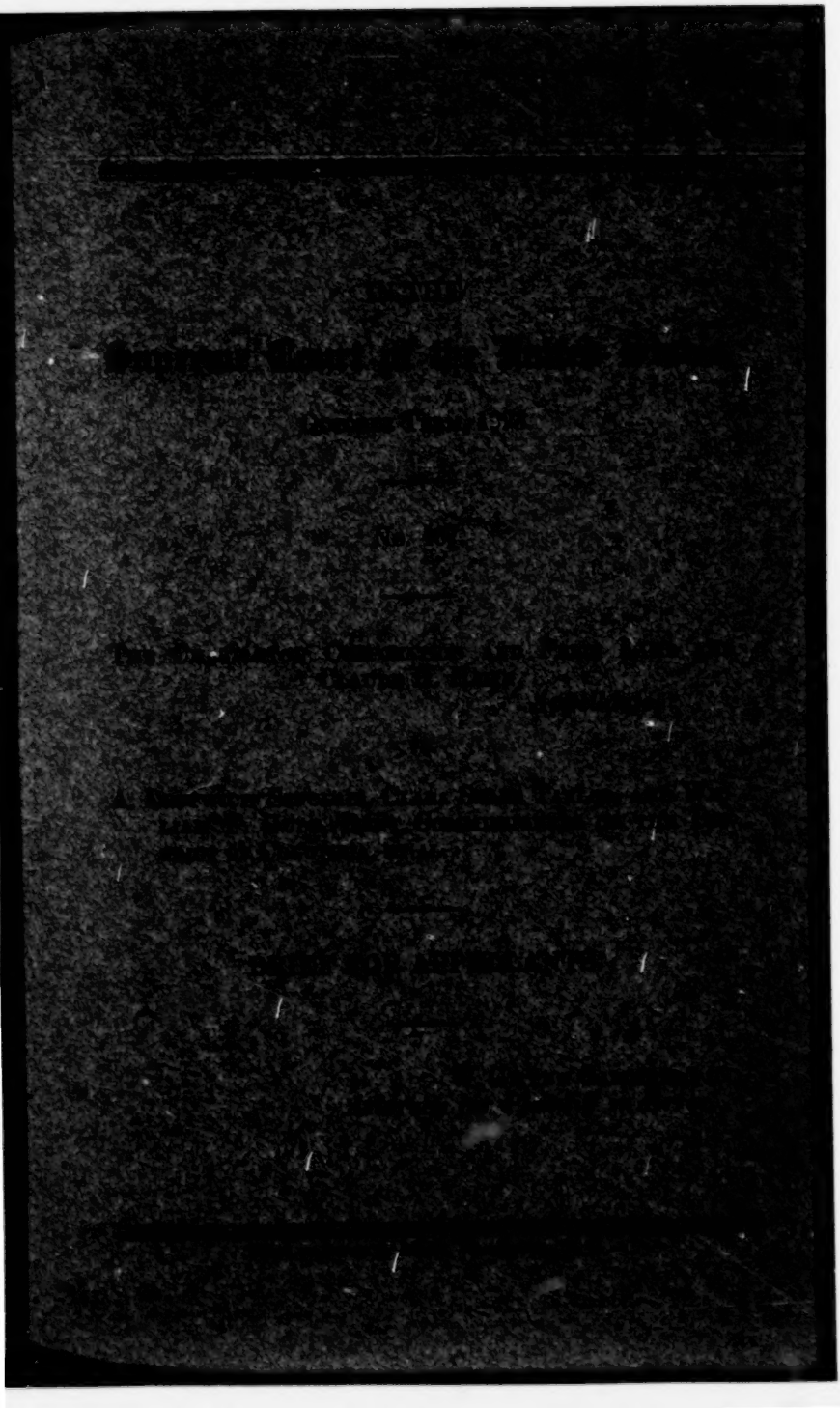
In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 23rd day of November, 1922.

Morgan H. Beach, Clerk, by W. E. Williams, Assistant Clerk.
(Seal of the Supreme Court of the District of Columbia.)
E. W.

[Endorsed:] No. 3915. The Chastleton Corporation et al. vs. A. Leftwich Sinclair et al. Addition to Record per Stipulation of Counsel. Court of Appeals, District of Columbia. Filed Nov. 27, 1922. Henry W. Hodges, Clerk.

[Endorsed:] No. 467. The Chastleton Corporation, Felix Lake, and Claude H. Hahn, appellants, vs. A. Leftwich Sinclair, Clara Sears Taylor, and William F. Gude, — Commissioners of the District of Columbia, appellees. Addition to Record per Stipulation of Counsel. Law Offices of W. Gwynn Gardiner.

[Endorsed:] File No. 29,777. Supreme Court U. S., October Term, 1923. Term No. 467. The Chastleton Corporation, Felix Lake, and Claude H. Hahn, Appellants, vs. A. Leftwich Sinclair, Clara Sears Taylor, and William F. Gude, — Commissioners of the District of Columbia. Stipulation and Addition to Record. Filed January 23, 1924.



INDEX.

CASES CITED.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923

No. 467

THE CHASTLETON CORPORATION AND FELIX LAKE AND CLAUDE H. HAHN,

Appellants,

vs.

A. LEFTWICH SINCLAIR, CLARA SEARS TAYLOR, AND WILLIAM F. GUDE, RENT COMMISSIONERS OF THE DISTRICT OF COLUMBIA, ET AL.

BRIEF FOR APPELLANTS

STATEMENT

This case is here upon an appeal allowed by the Court of Appeals of the District of Columbia to review a judgment of the Court of Appeals of the Dis-

trict of Columbia (Rec. p. 56) which judgment affirmed a judgment of the Supreme Court of the District of Columbia (Rec. p. 52) by which it was adjudged that the bill of the appellants should be dismissed.

The original proceeding was begun by the appellants by a bill in equity, filed in the Supreme Court of the District of Columbia on the 27th of October, 1922 (Rec. p. 2).

Appellees filed a motion to dismiss the bill (Rec. p. 49), which said motion was by the Court granted on the 16th day of November, 1922 (Rec. p. 52).

The appellants appealed from this action of the lower court to the Court of Appeals of the District of Columbia, which Court affirmed the action of the lower Court, and thereafter allowed this appeal (Rec. p. 57).

THE FACTS

Appellant Lake was, on the 14th of February, 1922, the owner of property located at 16th and R Streets, northwest, in the District of Columbia, known as "The Chastleton Apartments."

A commission known as the Rent Commission of the District of Columbia, acting under the authority vested in it by the Act of Congress of the 24th of August, 1921, commonly known as the "Rent Commission Act," gave notice of its purpose and intention to value this property and to fix the rentals for each apartment in said property (Rec. p. 7, par. 7).

At this time the owner of said property, the said Felix Lake, was not in the District of Columbia, nor was he in the District of Columbia on the return day named in this notice, to wit, the 14th day of February, 1922, nor did he know of such action by the Rent Commission. At ten o'clock A. M. on the 14th day of Feb-

ruary, 1922, the Secretary of the F. H. Smith Company, who were the rentals agents only for this property, appeared before the Rent Commission and filed an affidavit setting forth in substance the fact that the owner was out of the jurisdiction, and had no knowledge of the purpose and intention of the Commission to value this property and fix the rentals, and asked that the case be continued until such time as the owner could be communicated with, further advising the Commission that the rental agent, the F. H. Smith Company, had no power or authority to employ counsel or to expend the necessary sums to obtain proper evidence to present to the Rent Commission in order to advise the Rent Commission as to the real value of the property (Rec. p. 56).

The Rent Commission ignored the request of the rental agent and proceeded to fix the value of the property at Two Million Dollars (Rec. p. 42).

During the proceedings it developed that a contract had been entered into on the 2nd day of February, 1922 (Rec. p. 4) between the said Lake and one Jesse Ball duPont, or Alfred I. duPont, her husband, under the terms of which the said duPont had contracted and agreed to pay the equivalent of Three Million Dollars for this property, and thereafter and during the hearings on, to wit, the 27th of March, 1922 (Rec. p. 5), a deed was executed, delivered and recorded by the said Felix Lake, transferring and conveying all of his right, title and interest in said property, including the personal property, furniture, furnishings and fixtures, in said property to the said Jesse Ball duPont or her nominee, the National City Development Company.

It will be noted that while the Rent Commission declined to extend the time for its hearings on the value

of the property until such time as Felix Lake, the owner, could return to the city, a period of ten or fifteen days at the most, nevertheless, after the hearings were closed, no decision was rendered in said cause until on, to wit, the 15th day of August, 1922 (Rec. p. 9), when the findings and conclusions of the Rent Commission were filed in said cause (Rep. pp. 29-42).

It will likewise be noted from the record that immediately upon the filing of the conclusions and findings of the Rent Commission and on August 23, 1922, Jesse Ball duPont and her nominee, the National City Development Company, demanded of Lake the return of the moneys paid for said property, tendering to the said Lake the deed to said property (Rec. p. 18), which demand was refused by the said Lake, and a suit in equity was instituted for recision of the contract (Rec. p. 19).

The duPonts and their nominee, the National City Development Company, declined to pay obligations coming due on the trusts, and the property was, therefore, in default of said payments, sold at public auction on September 25, 1922, under the terms of the trusts. It was purchased by appellant Claude H. Hahn at this auction sale for $2,453,750.03, of which $975,000.00 was paid in cash, the purchase having been subject to a deed of trust of $1,478,750.03 (R. 13, par. 16). The furniture was not covered by this trust and therefore not offered for sale.

The total gross rentals on said property at the time of the institution of these proceedings by the Rent Commission were $356,760 per year (Rec. p. 11, par. 11). The Rent Commisison reduced the gross rentals to $299,760. (This record, through error, names $499,760.)

The Rent Commission likewise undertook to make its findings retrospective and effective as of March 1, 1922 (Rec. p. 29).

The tenants in the eight hundred and fifty-six apartments in this property, upon being advised by the Rent Commission of its action in making its findings effective as of March 1, 1922, thereupon made demand upon the new owner and Felix Lake, the former owner, to repay them the difference between the amount of rental fixed by the Rent Commission in its order of the 7th of August, 1922, and the amount being paid by the tenants from March 1, 1922, to August 7, 1922. The character of demand is shown by a letter from one of the tenants to the agent of appellants (Rec. pp. 15-16), which states thus:

> "Gentlemen:
>
> "On the 27th instant I received a notice from you to the effect that the Chastleton Apartment had been purchased by one of your clients and that you were charged with the management and collection of rents. I am therefore writing to you in regard to the decision of the Rent Commission to reduce the rent for my apartment, No. 817, from $100 to $80 per month, this reduction to take effect from March 1, 1922.
>
> "I paid the old rent of $100 per month up to and including August 31, 1922, so that the retroactive feature of the Rent Commission's decision is applicable to the six months from March to August, inclusive, which, at $20 per month, is equivalent to $120. I paid the new rent of $80 per month for my apartment for the month of September to Mr. Reilly, Agent for the National City Development Company. The Rent Commission has advised me that despite the fact that its decision has been appealed the new rents will be in force and the excess rent from March until Au-

gust, inclusive, should be returned to the tenant.

"I have received orders to leave Washington about the end of October and proceed to Manila, P. I. I therefore request that you send me a check for $120 as soon as possible to cover the difference in rent from March to August, inclusive.

"Yours truly,

"_____ _____."

The rentals for this property were from the 27th of March, 1922, the date on which title to said property was acquired by the duPont interest, up to and including the 30th of September, 1922, collected by one Reilly, agent for the duPonts or the National City Development Company, their nominee, and no portion thereof was paid over to any of the appellants in this cause.

As soon as the notice of an appeal from the action of the Rent Commisison was filed, and a bond given on said appeal, the Rent Commission notified each and every tenant (Rec. p. 16) that, despite the fact that its decision had been appealed from, the court had held that until the Commission's decision had been reversed, the new rents would be in effect from March 1st, and that the tenants should collect all excess rentals from the new owner that they had paid from March to October 1st (Rec. p. 10).

If these repayments were made, it would result in a repayment by Lake to these tenants of Seven Thousand ($7,000) Dollars, which would be from March 1 until March 27, the date on which deed to the duPonts was made, and the repayment by appellants Hahn and the Chastleton Corporation would be something over Thirty-eight Thousand ($38,000) Dollars; all of which would result in a total loss to appellants for the full

amount so repaid, that is, Forty-five Thousand ($45,000) Dollars (Rec. pp. 16-17).

It further appears (Rec. p. 17) that these tenants, with few exceptions, were without property, real or personal, and that should the action of the Rent Commission finally be declared void, no recovery could be had, or rather no judgment could be satisfied for this money actually repaid.

When this testimony in this case was being heard in February and March, 1922, the question of the extension of the Ball Rent Act, which expired in May, 1922, was being agitated, and during the hearing there was considerable testimony taken as to the then condition of the real estate market as to the supply and demand of apartments and houses in the District of Columbia (Rec. pp. 24-29).

This testimony, so taken, shows that there was no emergency existing in Washington at the time of this hearing, and it further shows that there were a great number of apartments for rent in the District of Columbia, ranging in price from Twenty-five Dollars a month up.

When the Rent Commission notified the tenants that they should demand of the then owner, the return of these moneys, that is the repayment to each tenant of the difference paid by him from the 1st of March to the 1st of October, over and above the amount fixed by the Rent Commission's findings, the appellants filed in the Supreme Court of the District of Columbia a bill in equity praying for relief against said action, and asking that the orders of the Rent Commission in this cause be declared illegal and void.

This bill, which was filed in the Supreme Court of the District of Columbia on the equity side under date of the 27th of March, 1922, named as defendants the

members of the Rent Commisison and all of the tenants in this property at the time of the order of the Rent Commission reducing the rental (Rec. pp. 1-20).

"WHAT BILL ALLEGES"

This bill, among other things, alleges that there was (Rec. p. 10, par. 11) *no national emergency and no emergency existed in the District of Columbia and that public housing conditions were such that apartments could be obtained in the District of Columbia of all character at rentals ranging from Twenty-five Dollars per month up, depending upon the condition and location and size of the apartments, and that the Rent Commission Act of the 24th of August, 1921, and the Rent Commission Act of May 22, 1922, under which Act the Rent Commisison was undertaking to operate at the time of the findings of the Rent Commission, was null and void and contrary to the 5th Amendment of the Constitution of the United States, and deprived appellants of their property without due process of law, and that said Act is also void under Sec. 10 of Article 1 of the Constitution of the United States.*

The petition further alleges that there was no emergency existing in the District of Columbia at the time of the passage of the Act of May 22, 1922; that there was no emergency existing in the District of Columbia at the time of the findings of the Rent Commission in this case, that there was no emergency existing in the District of Columbia at the time of the filing of the bill in equity, and that there was no scarcity of houses in the District of Columbia, and that there were available for all tenants apartments for rent varying in size and rental (Rec. 10, par. 11).

This bill in equity was verified by the appellants (Rec. pp. 19 and 20) and these allegations set forth were supported by exhibits, being portions of the testimony given in the proceeding before the Rent Commission, and in addition thereto, this verified bill was supported by an affidavit of one who had studied the situation in the District of Columbia for a period of one and a half years and was thoroughly familiar with all of the housing conditions in Washington.

The testimony of the witnesses before the Rent Commission, insofar as their testimony had to do with housing conditions in Washington, was annexed as an exhibit to the bill, being Exhibit 4, and found in the record (Rec. 24-29), this testimony showing no emergency insofar as the facts as given by these witnesses are concerned.

From examination of this exhibit it will be found there was copied in the record as a part of the testimony in the case, a page of the Washington Star (Rec. 24), that is, the Sunday issue of the Evening Star, a newspaper of general circulation in the District of Columbia, and from examination of that, it will be found that there were a great quantity of furnished and unfurnished apartments offered for rent at very reasonable rentals. In another portion of said exhibit (Rec. 28) it will be found that a proffer was made to prove that the owners of houses in the District of Columbia, as distinguished from apartments, had withdrawn from the rental market houses and offered them for sale because of the apprehension of the owners that the Rent Commission would reduce the rental to a point where the income—net return—would be so small that the owner could not afford to carry his property as an investment, and, therefore, they were in each instance taken from the rental market,

thereby reducing the number of houses on the market for rent.

Attached to the bill as an exhibit was the affidavit of Edward G. Perry, which affidavit was made on the 31st day of October, 1922 (addition to record per stipulation of counsel).

> The facts set forth in this affidavit are in substance thus: That deponent was the manager of the Rent Department of the F. H. Smith Company, which company does a very large real estate business in the District of Columbia and manages more apartment houses than any real estate firm in the city. That knowledge of deponent was obtained from many years' experience in handling apartments and in investigations which deponent had been carrying on during the last year and a half in order that he might be thoroughly conversant with local rental conditions in order to give the clients of his firm the best possible service. In this manner deponent has been thoroughly conversant with every phase of the rental conditions in Washington. Deponent thus states as a fact that in August, 1922, there were under construction in the District of Columbia seventy-two (72) apartment houses with an average capacity of thirty-four (34) apartments to a building. About fifty (50) of these buildings which were under construction at that time, have at the time of making this affidavit, to wit, October 31, 1922, been completed and were on said date open to the renting public and were more or less occupied, although there were many vacancies in these apartments. The balance of these apartment houses under construction will

be completed within three months from October 31, 1922. That there were at the time of making this affidavit some vacancies in 90 per cent of these fifty (50) new apartment houses completed and open to the public. The average rental per room on these fifty (50) new apartment houses completed and now open to the public is about $27.50 per room per month. There are at least three hundred (300) vacant apartments in desirable apartment houses in the District of Columbia.

As the new buildings are completed and made ready for occupancy, the number of available apartments will be greatly increased. The demand for apartments today is not as great as the number of apartments offered for rent. In the opinion of deponent if the public had confidence in the Rent Commission or if the Rent Commission was not in existence there would be hundreds and hundreds of houses of all kinds and classes in the District of Columbia with the rent sign upon them and offered to the public at reasonable prices. Due to the present feeling against the Rent Commission and the general prevailing opinion among real estate owners that they will not be accorded justice by the Rent Commission there are hundreds of houses being withdrawn from the rent list and offered for sale with the result that the renting public who desire houses rather than apartments are forced to purchase them.

ARGUMENT

We have in the case at bar a bill in equity verified by the appellants in which they state thus:

a. No emergency existing in the District of Columbia at the time of the passage of the Act of Congress on May 22, 1922; and no shortage in housing conditions in the District of Columbia on said date.

b. No emergency existing in the District of Columbia at the time of the hearing before the Rent Commission in the case before the Court; and no shortage in housing conditions in the District of Columbia.

c. No emergency existing in the District of Columbia at the time of the filing of the bill in equity in this case, to wit, October 22, 1922, and no shortage in housing conditions in the District of Columbia on said date.

These allegations were not made upon information and belief but were stated as facts (Rec. 10).

The allegations of facts are supported by exhibits to the bill, in which proof has been offered showing that no emergency existed in the District of Columbia at the time this testimony was given, and further showing that there were more houses and apartments offered for rent than there were applicants. In further support of these allegations of facts as found in the bill in this case, we have the affidavit of one who has studied the situation for a year and a half with a view of giving the best service possible to his clients.

In this affidavit we find facts which if undenied must be accepted as true, and they are undenied, and thus I take it under the decisions of this Court and the rules of this Court, this Court will treat them as true.

In this affidavit among other things we find the following positive statements of fact as to housing conditions in the District of Columbia:

1. Construction in 1922 of seventy-two (72) apartment houses with an average capacity of thirty-four (34) apartments to a building, with an average rental per room of $27.50 per month.

2. At least three hundred (300) vacant apartments in desirable apartment houses in the District of Columbia, which number will be increased when the twenty-two apartment houses uncompleted on the date of the making of the affidavit, have been finished.

3. The demand for apartments on the date that this affidavit was made, to wit, October 31, 1922, was not as great as the number of apartments offered for rent.

4. If the public had confidence in the Rent Commission or if the Rent Commission was not in existence, there would be hundreds and hundreds of houses of all kinds and classes in the District of Columbia with the rent sign upon them and offered to the public for rent at very reasonable prices.

5. There are hundreds of houses being withdrawn from the rent list and offered for sale by reason of the feeling against the Rent Commission, with the result that the renting public who desire houses rather than apartments are forced to purchase them.

We have in this case a record with these facts supporting the allegations in the bill that there was no emergency in the District of Columbia. That there was no such emergency at the time of the passage of the Act under consideration, to wit, the Act of May 22, 1922, and we have the further fact that the demand for apartments on the date that this bill in equity was filed, was not as great as the number of apartments offered for rent, and with the further fact that there were twenty-two (22) apartments be-

ing built with an average of seventy-two (72) apartments to each one, thus increasing to that extent the number of apartments offered for rent without any evidence at all that there would be a greater demand for these apartments.

The appellees must have believed that the conditions as stated in the bill itself; the conditions as shown by the affidavit annexed to the bill, and as shown by the exhibits to the bill, were correct and accurate in every particular, or they would have filed affidavits denying those facts.

No allegations or affidavits denying in any wise these statements were made or filed by the appellees, and no answer to the bill was made by the appellees.

Rule 30 of this Court, among other things, states: "Averments other than of value or amount of damage, if not denied, shall be deemed confessed, except as against infants, lunatics, or other non compus persons and not under guardianship."

We find that Rule 34 of Equity Rules of the Supreme Court of the District of Columbia, the Court in which these proceedings were originally instituted, contains the same language as this Court's Equity Rule No. 30, just quoted above.

The very learned counsel on the other side of this case was, therefore, thoroughly familiar with the rules of the Supreme Court of the District of Columbia and the decisions of the Courts of the District of Columbia which require him to deny these allegations of fact or come into court *admitting them to be true.*

We, therefore, have a case in which it is confessed by the appellees that no emergency existed in the District of Columbia at the time of the passage of the Rent Act in question; that no emergency existed at the time of the proceedings before the Rent Commis-

sion involving the property in question; that no emergency existed at the time of the filing of this suit on the equity side of the Supreme Court of the District of Columbia.

We likewise have it as an admitted fact that the demand for apartments in the District of Columbia at the time of the filing of this bill and at the time of the passage of the Act was not as great as the number of apartments offered for rent, and thus it would appear that no emergency existed.

THE RENT ACT

Looking to this Act of Congress, approved May 22, 1922, commonly known as the Rent Act, we find the preamble thereof states thus:

> "BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That, it is hereby declared the emergency described in Title Two of the Food Control and the District of Columbia Rent Acts still exists and continues in the District of Columbia, and that the present housing conditions therein require the further extension of the provisions of such title."

Looking further to this Rent Act we find Section 106-A reading thus:

> "For the purpose of this title it is declared that all property and apartments are affected with a public interest and that the loss and charges therefore, or services in connection therewith, and all other terms and conditions of the use or

> occupancy thereof, shall be fair and reasonable; and no unreasonable or unfair provision of a loss or other contract for the use of occupancy of such property with respect to such rents, charges, terms or conditions is hereby declared to be contrary to public policy."

While the declaration of a Legislative Body as quoted above declares as a fact that this emergency still exists, nevertheless the rule of law is that—

> "While a declaration by a legislature concerning public conditions is entitled to at least great respect, yet it may not be held conclusive by the Courts when the facts in the Record show contrary conditions to exist.

See Shoemaker vs. United States, 147, 282-289; Hernstorn vs. Danville & W. Railroad Company, 208 U. S. 598-606; Prentis vs. A. C. L. Railway Company, 211 U. S. 210-227; Producers' Transportation Company vs. Railroad Commission, 251 U. S. 228-230; Blosk vs. Hirsh, 256 U. S. 135-170.

It is, therefore, most respectfully submitted that this declaration of Congress

> "That the emergency described in Title Two of the Food Control and the District of Columbia Rents Act still exists and continues in the District of Columbia"

is not binding on the Court and the Court will treat the facts in the record, to wit, that no emergency exists as the fact.

The original Rent Act was before this Court in Block vs. Hirsh, supra, and that Act was by this Court held constitutional.

Attention is invited to the language of this Court in its opinion in which it limits the constitutionality of such an act to a case *where the public emergency requires it.*

Looking to the language of the Court in support of this claim, we quote its language thus:

> "We do not perceive any reasons for continuing the justification of the Act in the foregoing case to a law limiting the property rights now in question, *if the public exigency requires that.*

Thereafter this Court had before it the Rent Act of New York, and again this Court held the Act to be valid. It is most respectfully submitted, however, that the decision of this Court in the New York case in no wise controls the question now before the Court, since the facts as shown by the Records in the New York case was that a Committee had been appointed by the Governor of New York to investigate the conditions and that Committee after extensive research and investigation reported back to the Legislature that the conditions were such as to menace life, health and public morals.

THE FACT THAT THE LEGISLATURE ENACTMENT UPON ITS FACE DECLARES AN EMERGENCY TO EXIST IS NOT BINDING UPON THE COURT.

If the facts in the case show as in this case, that there was no emergency or shortage of apartments in Washington at the time of the passage of this Act and from the date of the passage up to the date of the filing of this suit, the Court will recognize and consider the facts as contained in the record, and indeed may

go behind the Declaration as contained in the enactment and determine whether or not a public emergency existed.

This Court in considering this question in Mugler vs. Kansas, 123 U. S. 661, said:

> "The Courts are not bound by mere forms nor are they to be misled by mere pretenses, they are at liberty—indeed are under a solemn duty—to look at the circumstances of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to the subject, or is a probable invasion of rights secured by the fundamental law, it is the duty of the Courts to so adjudge and thereby give effect to the Constitution."

The most striking case in which the Court pointed out its duty to consider the facts and declare the enactment unlawful, even though the act upon its face said that its enactment was made necessary for the purpose of protecting the public health, safety and the public morals, is found in Buchanan vs. Waverly, 245 U. S. 60-82. In this case the ordinance undertook to segregate the districts to be occupied by blacks and whites in Louisville, Kentucky. The ordinance stated thus:

> "An ordinance to prevent conflict and ill-feeling between the white and colored races in the city of Louisville, and to preserve the public peace and promote the general welfare by making reasonable provisions requiring, as far as practicable, the use of separate blocks for residence, places of abode

and places of assembly by white and colored people respectively."

When the Supreme Court rendered its decision, Mr. Justice Day, speaking for the Court in discussing the question where the statute undertakes to bring it within the police power when the facts existing did not justify such invasion, on page 75 of the opinion said:

> "True it is that dominion over property springing from ownership is not absolute and unqualified. The disposition and use of property may be controlled in the exercise of the police power in the interest of the public health, convenience, or welfare. Harmful occupations may be controlled and regulated. Legitimate business may also be regulated in the interest of the public. Certain uses of property may be confined to portions of the municipality other than the resident district, such as livery stables, brickyards and the like, because of the impairment of the health and comfort of the occupants of neighboring property. Many illustrations might be given from the decisions of this Court, and other Courts, of this principle, but these cases do not touch the one at bar. * * * That one may dispose of his property, subject only to the control of lawful enactments curtailing that right in the public interest, must be conceded. * * * The effect of the ordinance under consideration was not merely to regulate a business or the like, but was to destroy the right of the individual to acquire, enjoy, and dispose of his property. Being of this character, it was void as being opposed to the due-process clause of the constitution."

WAS THE HOUSING CONDITION IN WASHINGTON SUCH ON THE DATE OF THE PASSAGE OF THIS ACT AS TO MENACE LIFE, HEALTH, AND PUBLIC MORALS?

If the condition in Washington on the date of the passage of this Act was such that there was no menace to life, health or public morals, then the passage of this Act by Congress, under which it seeks to control the right of a private owner of his own property to contract in relation thereto, is beyond the police power of the State and the Act itself is unconstitutional.

By reference to the language of this Act, Section 109-A, we find this language:

> "The right of a tenant to the use or occupancy of any rental property or apartment, existing at the time this Act takes effect or hereafter acquired under any lease or other contract for such use or occupancy, or under any extension thereof, by operation of law, shall notwithstanding the expiration of the term fixed by such lease or contract, continue at the option of the tenant. * * *"

Section 109-B of this Act provides:

> "All remedies of the owner at law or equity based on any provision of any such lease or contract to the effect that such lease or contract shall be determined by forfeiture if the premises are sold or hereby suspended so long as this title is in force."

By reference to these sections of this Act which go to the very foundation of the principles upon which the Act is founded, we find them contrary to the

Constitution of the United States, for in the Constitution of the United States we find:

> "The National Government by the fifth amendment to the Constitution and the States by the fourteenth amendment to the Constitution are forbidden to deprive any person of life, liberty or property without due process of law."

We likewise find in Section 10 of Article One the provision that no State shall * * * pass any law * * * impairing the obligation of contracts.

These provisions in this Rent law and other provisions as found in this Rent law, not only restrict and limit the use of the owner in his right to contract with reference to his private property, but we find them restricting him in the right to sell and dispose of his own private property.

It is earnestly insisted that these invasions of private property rights are all unconstitutional and void, because they take private property for private use—they take private property and devote it to private use, without permitting the owner to prescribe the manner of its use, the income to be derived from it or the right to sell it, which it is very respectfully and earnestly submitted—is the taking of private property for private use without due process of law and contrary to the very foundation of the Constitution.

In Mo. Pac. R. R. Co. vs. Nebraska, 164 U. S. 403, this Court in passing upon the right to use private property for private use said (opinion of Mr. Justice Gray (Rec. 417)):

> "This Court confining itself to what is necessary for the decision of the case before it, is unanimously of the opinion that the order in question,

so far as it required the Railroad Corporation to surrender a part of its land to the petitioners, for the purpose of building and maintaining elevator upon it, was, in essence and effect, a taking of private property of the railroad corporation for the private use of the petitioners. The taking by a State of the private property by one person or corporation without the owner's consent for the private use of another, is not due process of law, and is a violation of the Fourteenth Article of the Constitution of the United States."

In Wilkinson vs. Leland, 2nd Pet. 627, Mr. Justice Story in considering this question and delivering the opinion of this Court, as found on page 658, of that opinion, said:

"We know of no case in which a legislative Act to transfer the property from A to B without his consent, has ever been held a constitutional exercise of legislative power in any State in the Union. On the contrary it has been constantly resisted as inconsistent with just principles, by every judicial tribunal in which it has been attempted to be enforced."

Mr. Justice Brewer in delivering the unanimous opinion of this Court in Monongahela Navigation Co. vs. U. S. 148, U. S. 312, considered this question, and on page 324 of this Opinion, we find this statement:

"For in any society the fullness and efficiency of the securities which surround the individual in the use and enjoyment of his property constitute one of the most certain tests of the character and value of the government. The first ten commandments to the Constitution, adopted as they were soon after the adoption of the Constitution, are

> in the nature of a bill of rights and were adopted in order to quiet the apprehension of many that without some such declaration of rights, the Government would assume, and might be held to possess, the power to trespass upon those rights of persons and property, which by the Declaration of Independence were affirmed to be unalienable rights."

In Ochoa vs. Hernandez, 230 U. S. 139, this Court in its opinion delivered by Mr. Justice Pitney, as found on page 161, in considering this question said:

> "Without the guaranty of 'due process' the right of private property cannot be said to exist."

This Court as late as November 6, 1922, in Children's Hospital vs. Atkinson, et al, in considering the legality of the Child Labor Law which was an Act of Congress restricting the right to contract for labor, said:

> "The same principle was applied in the rent cases (Block v Hirsh, 256 U. S. 135 and Marcus Brown Holding Company v. Feldman, 256 U. S. 170) where this court sustained the legislative power to fix rents as between landlord and tenant upon the ground that the operation of the statutes was temporary to tide over an emergency and that the circumstances were such as to clothe 'the letting of buildings * * * with a public interest so great as to justify regulation of law.' The Court said (p. 157):
>
> " 'The regulation is put and justified only as a temporary measure (citing Wilson v. New, supra). A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change.' "

In Pennsylvania Coal Company, this Court on the 11th of December, 1922, in considering the rights of the private owner of property to use that property in any lawful manner that he pleased, commented upon the opinion of this Court in the Hirsh-Block case, supra, in the following language:

> "We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the Constitutional way of paying for the change."
>
> > "As we already have said this is a question of degree and therefore cannot be disposed of by general proposition. But we regard this as going beyond any of the cases decided by this Court. The late decisions upon laws dealing with the congestion of Washington and New York caused by the war, dealt with laws, intended to meet a temporary emergency, and providing for compensation determined to be reasonable by an impartial Board. They went to the verge of the law, but fell far short of the present case."

The above is cited from the opinion of this Court delivered by Mr. Justice Holmes in Pennsylvania Coal Co., plaintiff in error, vs. J. H. Mahon and Margaret Craig Mahon, decided December 11, 1922.

Looking to the decision of this Court in Block vs. Hirsch, supra, we find this language in the opinion of the Court:

> "In this instance Congress stated a publicly notorious and almost world-wide fact. That the emergency declared by the statute must be as-

> sumed, and the question is whether Congress was incompetent to meet it in the way in which it has been met by most of the civilized countries of the world."

With this language of the Court above quoted, read the further language of the Court, as found in this opinion, which states thus:

> "We do not perceive any reason for denying the justification held good in the foregoing cases to a law limiting the property rights now in question if the public emergency requires that."

It would seem that the Court having found that a public emergency existed, that the right to regulate the use of property *while that public emergency existed* was within the power of Congress.

While it is true that at the time of the institution of the suit in Block vs. Hirsh, supra, a public emergency did exist and was commonly known to exist, it is just as true that when the present rent law was passed on the 22nd of May, 1922, no public emergency existed and it *was publicly known not to exist,* and we have before the Court the record in this case in which it is conclusively shown by pleadings, exhibits and affidavits that no emergency existed in the District of Columbia on the 27 day of May, 1922, and it is therefore most earnestly submitted that applying the principles of law as laid down by this Court in the Hirsh-Block case, supra, to the facts in the case at bar, we need no better authority in support of our contention, that on the record before the Court in this case, the Act must be found to be unconstitutional.

If Congress could by a mere declaration declare that two years from the 22nd of May, 1922, or during a period for two years beginning with the 22nd day of May, 1922, there would be a shortage in the

housing conditions in Washington and thereby destroy the right of the private citizen to enjoy his property in such lawful manner as he pleases, by regulating the price at which he should rent it, by directing the manner in which he should sell it, by dictating the amount of heat he should furnish to his tenant, by demanding the amount of repairs that he should put upon his property, then why would not Congress have the right to declare that fifty years hence, there would be another World War and therefore we must preserve our food supplies from now until such period, and therefore fix the amount of consumption of food, the price at which all foodstuffs should be sold—in fact to regulate the method of sale, and the selling price of all commodities of every nature, kind and description for the full period from now until the World War that Congress says we will have fifty years hence.

It is most respectfully submitted that Congress has no power to regulate and control the use of private property in the matter in which it has attempted to do in the Act before the Court, and since no emergency exists and there is no shortage of houses and no shortage of apartments, the right to control is contrary to the provisions of the Constitution of the United States and is, therefore, void.

It is most respectfully submitted that from the record in this case the Court will find that the housing condition in Washington is not such as endangers the public health, the public morals or the public comfort, and is, therefore, not within the police power, and cannot be supported under the Constitution of the United States.

Respectfully submitted,

W. Gwynn Gardiner,
Attorney for Plaintiff in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 467.

THE CHASTLETON CORPORATION AND FELIX LAKE AND CLAUDE H. HAHN, APPELLANTS,

v.

A. LEFTWICH SINCLAIR, CLARA SEARS TAYLOR, AND WILLIAM F. GUDE, RENT COMMISSIONERS OF THE DISTRICT OF COLUMBIA, ET AL.

BRIEF FOR APPELLEES.

CHAPIN BROWN,
Attorney for the Rent Commission.
ROBERT H. McNEILL,
Attorney for Other Appellees.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 467.

THE CHASTLETON CORPORATION AND FELIX LAKE AND CLAUDE H. HAHN, APPELLANTS,

v.

A. LEFTWICH SINCLAIR, CLARA SEARS TAYLOR, AND WILLIAM F. GUDE, RENT COMMISSIONERS OF THE DISTRICT OF COLUMBIA, ET AL.

BRIEF FOR THE RENT COMMISSION AND FOR THE OTHER APPELLEES

Statement of the Facts

The statement of the case made by Mr. Justice Van Orsdel, in delivering the opinion of the Court of Appeals of the District of Columbia in this case, sets forth the facts, and the questions of law to be decided, briefly and concisely, as follows:

> "Mr. Justice Van Orsdel delivered the opinion of the court. Appellants filed a bill in equity in the Supreme Court of the District of Columbia to restrain

defendants and each of them from attempting in any wise to enforce the terms of an order entered by defendant Rent Commission on August 15, 1922.

"From a decree denying complainant's motion for a restraining order, and sustaining a motion of defendants to dismiss the bill for want of equity, this appeal was taken.

"The order complained of readjusted and reduced rental rates on a large number of apartments in the Chastleton Apartment Building in this city. It appears, however, from the statement of the chancellor in the court below, when the decree in this case was entered, that an appeal had been taken by appellants from the order of the Commission to the general term of the Supreme Court of the District of Columbia, and that the appeal had been perfected within the necessary 10 days from the date of the order.

"The bill, among other things, avers, as ground for injunction, that notice was not served by the Rent Commission upon the owner of the property, but that service was had upon the rental agents. The sufficiency of such notice to give the Rent Commission jurisdiction is challenged. This court had occasion to fully consider this question in a case where the facts were similar to those in the present case, and it was held that the notice upon the rental agent is sufficient to confer jurisdiction in the Commission to proceed with the adjustment of rents in the absence of the owner of the property, Tebbs *v.* Union Realty Corporation, — App. D. C., —; 266 Fed., 1011.

"Coming to the ground upon which the motion to dismiss, in the court below, was based, namely, want of equity, we are of opinion that all the questions raised by the bill can be preserved and presented on appeal, and that appellants are furnished such a complete and adequate remedy at law as to forbid recourse to equity.

"The constitutionality of the present Rent Law, 42 Stats. L. 543, is assailed in this proceeding. The constitutionality of the former rent law was sustained by the Supreme Court in the case of Block *v.* Hirsh, 256 U. S., 135. Whether there are distinctions in the present law which would cause that court to change its opinion, is not for us to determine.

"The decree is affirmed with costs" (Record, pp. 55, 56; 51 Wash. L. Rep., 624, issue of September 28, 1923).

This brief is filed on behalf of the Rent Commission under authority and direction of the Statute which provides as follows:

> "The attorney appointed by the (Rent) Commission shall appear for and represent the Commission in all judicial proceedings." * * *
>
> (Act of Aug. 24th, 1921, 42 U. S. Stat., p. 297, 298.)

A copy of the Rent Laws is hereto attached for the convenience of the court.

In the case now on appeal, the "determination" of the Commission was generally in favor of the tenants, and consequently the respective landlords, The Chastleton Corporation, Felix Lake and Claude H. Hahn, are appellants.

Questions of Law Presented

Three questions of law are presented for decision on this appeal:

First: Is the amendment of May 22, 1922 (43 U. S. Stat., 543), to the Rent Act of October 22, 1919 (41 U. S. Stat., 297, 298), constitutional and valid?

Second: If the said act (amendment of May 22, 1922) is constitutional and valid, *does the provision for appeal* from its determination of the Rent Commission to the Supreme Court of the District of Columbia, in General Term, *satisfy the due process of law* provision of the Constitution of the United States—5th amendment—and all other provisions of the Constitution?

Third: If the act (amendment of May 22, 1922) is constitutional and valid, is a service of process upon, or notice to, the so-called "rental agent" sufficient to give the Rent Commission the jurisdiction, power or authority to fix, or, in the language of the statute, make a "determination" of rents of rental property and apartments?

Argument

It will shorten this brief by first considering the second of the above questions of law, which may be briefly stated as follows:

Does the provision in the act for appeal from a "determination" of the Rent Commission to the Supreme Court of the District of Columbia, in General Term, satisfy the provisions of the 5th amendment of the United States Constitution?

The language of the act, relating to an appeal to the Supreme Court of the District of Columbia, is plain and has been construed by the Court of Appeals of the District of Columbia, as giving to any litigant *every* right he might otherwise have in any court proceedings.

The provisions for a remedy by appeal in the (amendatory) act of May 22, 1922 (42 U. S. Stat., 543), from the determination of the Rent Commission to the General Term of the Supreme Court of the District of Columbia, is in effect the same as the provision for appeal in the former act of October 22, 1919 (41 U. S. Stat., 297, 298), to the Court of Appeals of the District of Columbia—the appellate court only being changed—and the Court of Appeals of the District of Columbia in *construing* the language of the first statute (of October 22, 1919, 41 U. S. Stat., 297, 298), relating to the jurisdiction of the court on appeal, has said in the case of Karrick *v.* Cantrill, decided January 3, 1922 (51 App. D. C., 176 at 178), as follows:

> "(1) The first question to be considered is whether the rates fixed will *give* defendant Karrick *a reasonable return* on the value of the specific property affected by the order of the Commission. While the law creating the Rent Commission undertakes to limit the Appellate Court to a review of questions of law, if it is suggested that the rental rates fixed are such that they will result in confiscation, *it then becomes the duty of the court, for the proper determination of that issue, to review the proceedings had before the Commission, both as to law and FACT.* On this point, defendant cannot be deprived of a judicial investigation; otherwise, he would not be accorded due process of law."

The case cited by the Court of Appeals of the District of Columbia (Ohio Valley Co. *v.* Ben Avon Borough, 253 U. S. 287, 289, 40 Sup. Ct. 527, 528, 64 L. Ed., 908), and quoted from at length in its opinion, as sustaining the proper *construction* of the language of the District of Columbia Rent Act, by that court (the District of Columbia Court of Appeals) related to the *legislation by a State,* under the provisions of the *14th* amendment to the Constitution, which provision, of course, is a limitation only on the *States* of the Union. But the *same language in effect* is used in the 5th amendment to the Constitution which is applicable to all the States of the Union and to the District of Columbia, which 5th amendment is in the following language:

> * * * "nor shall any person * * * be deprived of life, liberty or property without due process of law";

and with the further provision (in the 5th amendment):

> "nor shall private property be taken for public use, without just compensation."

The Court of Appeals of the District of Columbia then proceeded to consider the effect of this 5th amendment upon the provision of the Rent Act relating to appeals from the "determinations" of the Rent Commission, and proceeded to consider and *try* the case on appeal both on the questions of law and of *fact,* and, in delivering the opinion of the court, Mr. Justice Van Orsdel, speaking for the court, at page 182, says:

> "It is apparent that this result is so unfair and unreasonable that it amounts *to deprivation of property without due process of law, within the inhibition of the 5th amendment to the Constitution.* The rates fixed are confiscatory and therefore void."
>
> The italics are supplied.

The above cited case of Karrick *v.* Cantrill having been reversed and remanded, the Rent Commission again fixed the rents and duly filed its (second) "determination" from which (second) "determination" the landlord appealed, and the Court of Appeals, District of Columbia, again assumed jurisdiction both of the law and of the *facts,* and again set aside the "determination" of the Rent Commission, and *dismissed* the petition (Karrick v. Cantrill, Washington Law Reporter, vol. 51, No. 40, whole No. 2618, of Friday, October 5, 1923, page 634), in which last cited case at page 635 the Court of Appeals, District of Columbia, say:

> "On the above *statement of facts* and the authority of our former opinion, the order of the Commission is reversed with costs, and the cause remanded with directions to set aside the order and dismiss the action."

The three decisions of the Court of Appeals, above cited, in construing the language of the rent statute to mean that the *provision for appeal* therein from the "determination" of the Rent Commission, satisfies "the due process clause" and other provisions of the 5th amendment, are plainly in conformity with and supported by the decision of this Supreme Court in the case of Block *v.* Hirsh, 256 U. S., 135, wherein at page 158, this court, speaking through Mr. Justice Holmes, says:

> "The statute is objected to on the further ground that landlords and tenants are deprived by it of a trial by jury on the right to possession of the land. If the power of the Commission by statute to regulate the relation is established, as we think it is, by what we have said, this objection amounts to little. To regulate the relation and to decide the facts affecting it are hardly separable. *While the act is in force there is little to decide except whether the rent allowed is reasonable, and upon that question the courts are given the last word.*" (The italics are supplied.)

plainly referring to and construing the appellate clauses (secs. 108 and 110) of the act of October 22, 1919.

The Supreme Court recognizes and is guided by the decisions of the highest court in the District of Columbia in construing and determining the law (De Vaughn *v.* Hutchinson, 165 U. S., 566, 17 Sup. Ct. Rep., 461, 41 L. Ed., 827).

It is plain, therefore, that the Rent Act, and the amendments thereto, fully provide for a judicial hearing required by the Constitution of the United States.

The Question of Service and Notice

It is a recognized practice or custom in the District of Columbia for so-called rental agents to lease or rent real estate in their own name, instead of in the owner's name. This is generally done not as "agent" but as if the agent were the "owner." Whether or not the following quoted language was intended to recognize this custom and to prevent any legal question being successfully raised in reference thereto is unnecessary to decide, yet section 101 of the act and of the amendment thereto provides:

> "The term 'owner' includes a lessor or sublessor, or other person entitled to receive rent or charges for the use or occupancy of any rental property or apartment or any interest therein, or his *agent*."

The question of the legality of service upon this so-called rental agent—leasing property in his own name—as binding his principal, has been thoroughly considered and decided by the Court of Appeals in the case of Tebbs *v.* Union Realty Corporation, 52 App. D. C., 347, 286 Fed. Rep., 1011, in which case it was held:

> (Syllabus) "2. *Landlord and tenant—Notice of rent proceedings to agent who leased premises is sufficient.*—Where premises were rented by an agent in his own name, and the owners recognized his authority to make the lease by claiming under it, a notice by the Rent Commission to the agent of the pendency of proceedings to fix a fair rental without notice to the owners, is sufficient to give the Commission jurisdiction under the Rent Commission Act, section 106, requiring notice to all parties in interest, especially in view of the right of the owner, under 111, to petition the Commission at any time for a modification of the judgment."

It is respectfully submitted that in view of the undisputed facts in the case at bar, and of the law, as determined by the next above quoted decision, the Rent Commission acquired full jurisdiction over the parties in interest, and the subject matter to be adjudicated.

The next question to be considered is:

Is the amendatory act of May 22, 1922 (42 U. S. Stat., 543), *constitutional and valid?*

When the Supreme Court, in the case of Block *v.* Hirsh, 256 U. S., 135, held the Rent Act of October 22, 1919 (41 U. S. Stat., 297, at 298) constitutional and valid, it necessarily decided that when the same or similar conditions exist, either of a temporary or permanent nature, the Congress has the Constitutional right to enact the same or similar legislation, either of a temporary or permanent duration. There was no dissent from this view from the decision of this court, and Mr. Justice McKenner, in delivering the dissenting opinion, assents to this view and uses the following language, at page 168:

> "If it (the Rent Act) can be made to endure for two years, it can be made to endure for more."

Acting upon this constitutional right, the Congress, by act of August 24, 1921 (42 U. S. Stat., 200), first extended the rent act for seven months, and by the act of May 22, 1922 (42 U. S. Stat., 543), extended it for two more years, that is, to May 22, 1924. In the last mentioned act of May 22, 1922, Congress in the preliminary part determined as follows:

> "That it is hereby declared that the emergency described in Title II of the Food Control and the District of Columbia Rents Act still exists and continues in the District of Columbia, and that the present housing and rental conditions therein require the further extension of the provisions of such title."

This court has decided that such a *legislative* declaration is binding upon the courts.

United States *v.* Des Moines Navigation & R. Co., 142 U. S., 510.

In the next above cited case, this court, speaking through Mr. Justice Harlan, at page 543, says:

> "That act is beyond challenge. The knowledge and good faith of a legislature are not open to question. It is conclusively presumed that a legislature acts with full knowledge, and in good faith. It is true the bill alleges that its passage was induced by the navigation company, by false representations and threats of suits; but such an allegation amounts to nothing. In Colley's Constitutional Limitations (5th ed.) the author citing several cases (222) observes:
>
> " 'From what examination has been given to this subject, it appears that whether a statute is constitutional or not is always a question of power; that is, a question whether the legislature of the particular case, in respect to the subject-matter of the act, the manner in which its object is to be accomplished, and the mode of enacting it, has kept within the constitutional limits and observed the constitutional conditions. In any case in which this question is answered in the affirmative, the courts are not at liberty to inquire into the proper exercise of the power. They must assume that legislative discretion has been properly exercised. If evidence was required, it must be supposed that it was before the legislature when the act was passed; and if any special finding was required to warrant the passage of the special act, it would seem that the passage of the act itself might be held to be equivalent to such finding. And, although it has sometimes been urged at the bar that the courts ought to inquire into the motives of the legislature where fraud and corruption were alleged, and annul their action if the allegations were established, the argument has in no case been acceded to by the judiciary, and they have never allowed the inquiry to be entered upon.'

> "See also Fletcher *v.* Peck, 10 U. S. 6 Cranch, 87 (3:162); Ex parte McCardle, 74 U. S. 7 Wall., 506 (19:264); Doyle *v.* Continental Ins. Co., 94 U. S., 535 (24:148); Powell *v.* Pennsylvania, 127 U. S., 678 (32:253."

To the same, or similar effect, in principle, are the cases cited with approval by the United States Supreme Court in the case of Moeschen *v.* Tenement House Dept., *supra*, of Jacorson *v.* Massachusetts, 197 U. S., 10, sustaining a law compelling *vaccination*, in which last-mentioned case it was held that the legislature "is not compelled to commit a matter of this character, involving the public health and *safety*, to the final decision of a court or jury" (6 Syllabus). Also the case of Holden *v.* Hardy, 169 U. S., 391, sustaining a law (of Utah) prohibiting laborers from working more than eight hours a day, and in which last-cited case, the United States Supreme Court, speaking from Mr. Justice Brown, at page 397, says:

> "The fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. The State still *retains an interest in his welfare*, however reckless he may be. The whole is no greater than the sum of all the parts, and when individual health, *safety*, and *welfare* are sacrificed or neglected, the State must suffer."

Also the case of Gardner *v.* Michigan, 199 U. S., 323 (citing with approval Dupont *v.* District of Columbia, 20 App. D. C., 177, involving criminal municipal regulation, provid-

ing for the removal of *garbage* by the public contractor, notwithstanding the fact proven by the testimony in the case, that the garbage had a *material money value*), in which (Gardner) case the United States Supreme Court held, speaking through Mr. Justice Harlan, at page 331, that if, in providing against such a nuisance, by a municipal regulation, the owner of such material suffers loss, such loss is presumed to be compensated in the *common benefit* secured to such owner by such regulation.

In all, I think, of the next above cited cases, there were dissenting opinions, but still, they decide and settle the constitutional questions involved, and must be followed in *future* decisions, *even by those members of the court who dissented from the decisions made by a majority of the court,* because those decisions settle the law of the land.

The decisions above cited involved statutes of the several States of the Union, and not the statutes of the United States Congress.

But added strength is given to any statute over a State statute that may be passed by the Congress by reason of the *additional power* conferred upon the Congress by the "ten mile square" provision of the Constitution, Article One (I) (Sec. 8), as follows:

> "SEC. 8. Congress shall have power * * *. 17. To exercise exclusive legislation *in all cases whatsoever,* over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise *like* authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of *forts, magazines, arsenals, dock yards,* and other needful buildings."

It is evident from the above provision of the Constitution, that *"the Congress"* has practically a *"war power,"* even in times of peace, to enact "exclusive legislation in all cases whatsoever" over the District of Columbia, because the Congress' right "to exercise exclusive legislation in all cases whatsoever, over *forts,"* etc., is in fact a *war power,* and the Congress has the same *power* to enact such legislation for the District of Columbia, at *all* times.

The cases which I have cited above sustaining the legislative power in legislation of this nature, have all been recently approved by this court in the case of Edgar A. Levy Leasing Co. *v.* Siegel, 258 U. S., 242, at 247. All of the cases above cited were cited by the Supreme Court as sustaining its decision in Katie Moeschen *v.* Tenement House Department of the City of New York, 203 U. S., 583, 27 Sup. Ct., 71, 51 L. Ed., 328.

Contention of Appellants on the Motion to Dismiss

It is the contention of appellants (p. 11, etc., of their brief) that because they *allege* in their bill of complaint *that no emergency exists,* the defendants are bound by such allegation, and that a demurrer to (or a motion to dismiss) the bill of complaint, admits the truth of such allegation in the bill of complaint. But it is respectfully submitted that such an allegation is *only a conclusion,* and that a demurrer, or motion to dismiss, admits only allegations *well pleaded.* Such allegations cannot overcome the solemn determination of the Congress that an emergency does exist (United States *v.* Des Moines Navigation & R. Co., 142 U. S., 510).

It is unnecessary for me to cloud the issue in this case, or

confuse the law, by the citation of authorities other than the case of Edgar A. Levy Leasing Co. *v.* Siegel, 258 U. S., 242.

The next above cited case involved the constitutionality of a law of the State of New York relating to the rental and housing conditions of the city of New York and other cities of that State, *passed subsequent to the close of the World War.* The constitutionality of that law was sustained by this court in the above cited case, and the principles of law established in that case govern the law of the case at bar.

It is respectfully submitted that the judgment of the Court of Appeals of the District of Columbia should be affirmed.

CHAPIN BROWN,
Attorney for the Rent Commission, D. C.
ROBERT H. McNEILL,
Attorney for the Tenants, Appellees.

APPENDIX.

District of Columbia Rent Law.

[EXTRACT FROM PUBLIC—No. 63—66TH CONGRESS.]

[H. R. 8624. 41 U. S. Stat., 297, at 298.]

An Act To amend an Act entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," approved August 10, 1917, and to regulate rents in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Food Control and the District of Columbia Rents Act."

TITLE II.—DISTRICT OF COLUMBIA RENTS.

SEC. 101. When used in this title, unless the context indicates otherwise——

The term "rental property" means any building or part thereof or land appurtenant thereto in the District of Columbia rented or hired and the service agreed or required by law or by determination of the commission to be furnished in connection therewith; but does not include an hotel or apartment.

The term "person" includes an individual, partnership, association, or corporation.

The term "hotel" or "apartment" means any hotel or apartment or part thereof, in the District of Columbia, rented or hired and the land and outbuildings appurtenant thereto, and the service agreed or required by law or by determination of the commission to be furnished in connection therewith.

The term "owner" includes a lessor or sublessor, or other person entitled to receive rent or charges for the use or occupancy of any rental property, hotel or apartment, or any interest therein, or his agent.

The term "tenant" includes a subtenant, lessee, sublessee or other person, not the owner, entitled to the use or occupancy of any rental property, hotel or apartment.

The term "service" includes the furnishing of light, heat, water, telephone or elevator service, furniture, furnishings, window shades, screens, awnings, storage, kitchen, bath and laundry facilities and privileges, maid service, janitor service, removal of refuse, making all repairs suited to the type of building or necessitated by ordinary wear and tear, and any other privilege or service connected with the use or occupancy of any rental property, apartment, or hotel.

The term "commission" means the Rent Commission of the District of Columbia.

SEC. 102. A commission is hereby created and established, to be known as the Rent Commission of the District of Columbia, which shall be composed of three commissioners, none of whom shall be directly or indirectly engaged in, or in any manner interested in or connected with, the real estate or renting business in the District of Columbia. The commissioners shall be appointed by the President by and with the advice and consent of the Senate. The term of each commissioner shall be two years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds. The commission shall at the time of its organization and annually thereafter elect a chairman from its own membership. The commission may make regulations as may be necessary to carry this title into effect.

All powers and duties of the commission may be exercised by a majority of its members. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission. The commis-

sion shall have an official seal, which shall be judicially noticed.

SEC. 103. Each commissioner shall receive a salary of $5,000 a year, payable monthly. The commission shall appoint a secretary, who shall receive a salary of $3,000 a year, payable in like manner; and, subject to the provisions of the civil-service laws, it may appoint and remove such officers, employees, and agents and make such expenditures for rent, printing, telegrams, telephone, law books, books of reference, periodicals, furniture, stationery, office equipment, and other supplies and expenses as may be necessary to the administration of this title. All of the expenditures of the commission shall upon the presentation of itemized vouchers therefor approved by the chairman of the commission be audited and paid in the same manner as other expenditures for the District of Columbia.

With the exception of the secretary, all employees of the commission shall be appointed from lists of eligibles supplied by the Civil Service Commission and in accordance with the civil-service law.

SEC. 104. The assessor of the District of Columbia shall serve ex officio as an advisory assistant to the commission, but he shall have none of the powers or duties of a commissioner. He shall attend the meetings and hearings of the commission. Every officer or employee of the United States or of the District of Columbia, whenever requested by the commission, shall supply to the commission any data or information pertaining to the administration of this title which may be contained in the records of his office. The assessor shall receive for the performance of the duties required by this section a salary of $1,000 per annum, payable monthly, in addition to such other salary as may be prescribed for his office by law.

SEC. 105. For the purposes of this title the commission or any officer, employee, or agent duly authorized in writing by it, shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any books, ac-

counts, records, papers, or correspondence relating to any matter which the commission is authorized to consider or investigate; and the commission shall have power to require by subpœna the attendance and testimony of witnesses and the production of all such books, accounts, records, papers, and correspondence relating to any such matter. Any member of the commission may sign subpœnas, administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses and the production of such books, accounts, records, papers, and correspondence may be required from any place in the United States at any designated place of hearing. In case of disobedience to a subpœna or of the contumacy of any witness appearing before the commission, the commission may invoke the aid of the Supreme Court of the District of Columbia or of any district court of the United States. Such court may thereupon issue an order requiring the person subpœnaed to obey the subpœna, or to give evidence touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. No officer or employee of the commission shall, unless authorized by the commission or by a court of competent jurisdiction, make public any information obtained by the commission.

SEC. 106. For the purpose of this title it is declared that all (*a*) rental property and (*b*) apartments and hotels are affected with a public interest, and that all rents and charges therefor, all service in connection therewith, and all other terms and conditions of the use or occupancy thereof, shall be fair and reasonable; and any unreasonable or unfair provision of a lease or other contract for the use or occupancy of such rental property, apartment, or hotel with respect to such rents, charges, service, terms, or conditions is hereby declared to be contrary to public policy. The commission upon its own initiative may, or upon complaint shall, determine whether the rent, charges, service, and other terms or conditions of a lease or other contract for the use or occupancy of any such rental property, hotel, or apartment are

fair and reasonable. Such complaints may be made (*a*) by or on behalf of any tenant, and (*b*) by any owner except where the tenant is in possession under a lease or other contract, the term specified in which has not expired, and the fairness and reasonableness of which has not been determined by the commission.

In all such cases the commission shall give notice personally or by registered mail and afford an opportunity to be heard to all parties in interest. The commission shall promptly hear and determine the issues involved in all complaints submitted to it. All hearings before the commission shall be open to the public. If the commission determines that such rents, charges, service, or other terms or conditions are unfair or unreasonable, it shall determine and fix such fair and reasonable rent or charges therefor, and fair and reasonble service, terms, and conditions of use or occupancy. In any suit in any court of the United States or the District of Columbia involving any question arising out of the relation of landlord and tenant with respect to any rental property, apartment, or hotel, except on appeal from the commission's determination as provided in this title, such court shall determine the rights and duties of the parties in accordance with the determination and regulations of the commission relevant thereto.

SEC. 107. A determination of the commission fixing a fair and reasonable rent or charge made in a proceeding begun by complaint shall be effective from the date of the filing of the complaint. The difference between the amount of rent and charges paid for the period from the filing of the complaint to the date of the commission's determination and the amount that would have been payable for such period at the fair and reasonable rate fixed by the commission may be added to or subtracted from, as the case demands, future rent payments, or after the final decision of an appeal from the commission's determination may be sued for and recovered in an action in the Municipal Court of the District of Columbia.

SEC. 108. Unless within ten days after the filing of the commission's determination any party to the complaint appeals therefrom to the Court of Appeals of the District of Columbia, the determination of the commission shall be final and conclusive. If such an appeal is taken from the determination of the commission, the record before the commission or such part thereof as the court may order shall be certified by it to the court and shall constitute the record before the court, and the commission's determination shall not be modified or set aside by the court, except for error of law. If any party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The commission may modify its findings as to the acts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original determination, with the return of such additional evidence. In the proceedings before such court on appeal from a determination of the commission, the commission shall appear by its counsel or other representative and submit oral or written arguments to support the findings and the determination of the commission.

SEC. 109. The right of a tenant to the use or occupancy of any rental property, hotel or apartment, existing at the time this Act takes effect, or thereafter acquired, under any lease or other contract for such use or occupancy or under any extension thereof by operation of law, shall, notwithstanding the expiration of the term fixed by such lease or contract, continue at the option of the tenant subject, however, to any

determination or regulation of the commission relevant thereto; and such tenant shall not be evicted or dispossessed so long as he pays the rent and performs the other terms and conditions of the tenancy as fixed by such lease or contract, or in case such lease or contract is modified by any determination or regulation of the commission, then as fixed by such modified lease or contract. All remedies of the owner at law or equity, based on any provision of any such lease or contract to the effect that such lease or contract shall be determined or forfeited if the premises are sold, are hereby suspended so long as this title is in force. Every purchaser shall take conveyance of any rental property, hotel, or apartment subject to the rights of tenants as provided in this title. The rights of the tenant under this title shall be subject to the limitation that the bona fide owner of any rental property, apartment, or hotel shall have the right to possession thereof for actual and bona fide occupancy by himself, or his wife, children, or dependents, or for the purpose of tearing down or razing the same in order immediately to construct new rental property, hotel, or apartment if approved by the commission, upon giving thirty days' notice in writing, served in the manner provided by section 1223 of the Act entitled "An Act to establish a code of laws for the District of Columbia," approved May 3, 1901, as amended, which notice shall contain a full and correct statement of the facts and circumstances upon which the same is based; but in no case shall possession be demanded or obtained by such owner in contravention of the terms of any such lease or contract. If there is a dispute between the owner and the tenant as to the accuracy or sufficiency of the statement set forth in such notice, as to the good faith of such demand, or as to the service of notice, the matters in dispute shall be determined by the commission upon complaint as provided in section 106 of this title.

SEC. 110. Pending the final decision on appeal from a determination of the commission, the commission's determina-

tion shall be in full force and effect and the appeal shall not operate as a supersedeas or in any manner stay or postpone the enforcement of the determination appealed from. Immediately upon the entry of a final decision on the appeal the commission shall, if necessary, modify its determination in order to make it conform to such decision. The difference, if any, between the amount of rent and charges paid for the period from the date of the filing by the commission of the determination appealed from and the amount that would have been payable for such period under the determination as modified in accordance with the final decision on appeal may be added to or allowed on account of, as the case demands, future rent payments or may be sued for and recovered in an action in the Municipal Court in the District of Columbia.

SEC. 111. The determination of the commission in a proceeding begun by complaint or upon its own initiative fixing fair and reasonable rents, charges, service, and other terms and conditions of use or occupancy of any rental property, hotel, or apartment shall constitute the commission's determination of the fairness and reasonableness of such rents, charges, service, terms, or conditions for the rental property, hotel, or apartment affected, and shall remain in full force and effect notwithstanding any change in ownership or tenancy thereof, unless and until the commission modifies or sets aside such determination upon complaint either of the owner or of the tenant.

SEC. 112. If the owner of any rental property, apartment, or hotel collects any rent or charge therefor in excess of the amount fixed in a determination of the commission made and in full force and effect in accordance with the provisions of this title, he shall be liable for and the commission is hereby authorized and directed to commence an action in the Municipal Court in the District of Columbia to recover double the amount of such excess, together with the costs of the proceeding which shall include an attorney's fee of $50, to be taxed as part of the costs. Out of any sums received

on account of such recovery the commission shall pay over to the tenant the amount of the excess so paid by him and the balance shall be paid into the Treasury of the United States to the credit of the District of Columbia: *Provided*, That if the commission finds that such excess was paid by the tenant voluntarily and with knowledge of the commission's determination, the whole amount of such recovery shall be paid into the Treasury of the United States to the credit of the District of Columbia.

SEC. 113. If in any proceeding before the commission, begun by complaint or on the commission's own initiative, and involving any lease or other contract for the use or occupancy of any rental property, hotel, or apartment the commission finds that at any time after the passage of this Act but during the tenancy the owner has, directly or indirectly, willfully withdrawn from the tenant any service agreed or required by a determination of the commission to be furnished, or has by act, neglect, or omission contrary to such lease or contract or to the law or any ordinance or regulation made in pursuance of law, or of a determination of the commission, exposed the tenant, directly or indirectly, to any unsafe or insanitary condition or imposed upon him any burden, loss, or unusual inconvenience in connection with his use or occupancy of such rental property, hotel, or apartment, the commission shall determine the sum which in its judgment will fairly and reasonably compensate or reimburse the tenant therefor. In any such proceeding involving a lease or other contract, the term specified in which had not expired at the time the proceeding was begun, the commission shall likewise determine the amount or value of any bonus or other consideration in excess of the rental named in such lease or contract received at any time directly or indirectly by the owner in connection with such lease or contract. The tenant may recover any amount so determined by the commission in an action in the Municipal Court of the District of Columbia.

SEC. 114. Whenever under this title a tenant is entitled to

bring suit to recover any sum due him under any determination of the commission, the commission shall, upon application by the tenant and without expense to him, commence and prosecute in the municipal court of the District of Columbia an action on behalf of the tenant for the recovery of the amount due, and in such case the court shall include in any judgment rendered in favor of the tenant the costs of the action, including a reasonable attorney's fee, to be fixed by the court. Such costs and attorney's fee when recovered shall be paid into the Treasury of the United States to the credit of the District of Columbia.

SEC. 115. The commission shall, by general order, from time to time prescribe the procedure to be followed in all proceedings under its jurisdiction. Such procedure shall be as simple and summary as may be practicable, and the commission and parties appearing before it shall not be bound by technical rules of evidence or of pelading.

SEC. 116. Any person who with intent to avoid the provisions of this title enters into any agreement or arrangement for the payment of any bonus or other consideration in connection with any lease or other contract for the use or occupancy of any rental property, hotel, or apartment, or who participates in any fictitious sale or other device or arrangement the purpose of which is to grant or obtain the use or occupancy of any rental property, hotel, or apartment without subjecting such use or occupancy to the provisions of this title or to the jurisdiction of the commission shall upon conviction be punished by a fine not exceeding $1,000 or by imprisonment for not exceeding one year or by both.

SEC. 117. The commission shall prescribe standard forms of leases and other contracts for the use or occupancy of any rental property, hotel, or apartment and shall require their use by the owner thereof. Every such lease or contract entered into after the commission has prescribed and promulgated a form for the tenancy provided by such lease or contract shall be deemed to accord with such standard form; and any such lease or contract in any proceeding before the com-

mission or in any court of the United States or of the District of Columbia shall be interpreted, applied, and enforced in the same manner as if it were in the form and contained the stipulations of such standard form.

The owner of an hotel or apartment shall file with the commission plans and other data in such detail as the commission requires, descriptive of the rooms, accommodations and service in connection with such hotel or apartment, and a schedule of rates and charges therefor. The commission shall, after consideration of such plans, schedules, data, or other information, determine and fix a schedule of fair and reasonable rates and charges for such hotels or apartments; and the rates and charges stated in such schedule shall thereafter constitute the fair and reasonable rates and charges for such hotel or apartment. The commission's determination in such case shall be made after such notice and hearing and shall have the same force and effect and be subject to appeal in the same manner as a determination of the commission under section 106 of this title.

SEC. 118. No tenant shall assign his lease of or sublet any rental property or apartment at a rate in excess of the rate paid by him under his lease without the consent of the commission upon application in a particular case, and in such case the commission shall determine a fair and reasonable rate of rent or charge for such assignment or sublease.

SEC. 119. The public resolution entitled "Joint resolution to prevent profiteering in the District of Columbia," approved May 31, 1918, as amended, is hereby repealed, to take effect sixty days after the date of the confirmation by the Senate of the commissioners first nominated by the President under the provisions of this title; but a determination by the commission made within such period of sixty days shall be enforced in accordance with the provisions of this title, notwithstanding the provisions of such public resolution. All laws or parts of laws in conflict with any provisions of this title are hereby suspended so long as this title is in force to the extent that they are in such conflict.

SEC. 120. The sum of $50,000, or so much thereof as may be necessary, is hereby appropriated and made immediately available to carry out the provisions of this title, one-half thereof to be paid out of money in the Treasury of the United States not otherwise appropriated and the other one-half out of the revenues of the District of Columbia.

SEC. 121. If any clause, sentence, paragraph, or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operations to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SEC. 122. It is hereby declared that the provisions of this title are made necessary by emergencies growing out of the war with the Imperial German Government, resulting in rental conditions in the District of Columbia dangerous to the public health and burdensome to public officers and employees whose duties require them to reside within the District and other persons whose activities are essential to the maintenance and comfort of such officers and employees, and thereby embarrassing the Federal Government in the transaction of the public business. It is also declared that this title shall be considered temporary legislation, and that it shall terminate on the expiration of two years from the date of the passage of this Act, unless sooner repealed.

Approved, October 22, 1919.

41 U. S. Stat., 297, at 298.

[PUBLIC—No. 71—67TH CONGRESS.]

[S. 2131. 42 U. S. Stat., 200.]

An Act To extend for the period of seven months the provisions of Title II of the Food Control and the District of Columbia Rents Act, approved October 22, 1919, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Title II of the Food Control and the District of Columbia Rents Act, approved October 22, 1919, shall remain in full force and effect until May 22, 1922.

SEC. 2. That the second paragraph of section 101 of such Act is amended to read as follows:

"The term 'rental property' means any building or part thereof or land appurtenant thereto in the District of Columbia rented or hired and the service agreed or required by law or by determination of the commission to be furnished in connection therewith, but does not include (*a*) any portion of a hotel or apartment building, (*b*) a garage or warehouse, or (*c*) any other building or part thereof, or land appurtenant thereto, used by the tenant exclusively for a business purpose other than the subleasing or otherwise subcontracting for use for living accommodations."

SEC. 3. That section 103 of such Act is amended to read as follows:

"SEC. 103. Each commissioner shall receive a salary of $5,000 a year payable monthly. The commission shall appoint a secretary, who shall receive a salary of $3,000 a year, and an attorney, who shall receive a salary of $5,000 a year, payable in like manner; and subject to the provisions of the civil service laws, it may appoint and remove such officers, employees, and agents, and make such expenditures for rent, printing, telegrams, telephone, law books, books of reference, periodicals, furniture, stationery, office equipment, and

other supplies and expenses as may be necessary to the administration of this title. The attorney appointed by the commission shall appear for and represent the commission in all judicial proceedings and generally perform such professional duties and services as attorney and counsel to the commission as may reasonably be required of him by the commission. All of the expenditures of the commission shall upon the presentation of itemized vouchers therefor approved by the chairman of the commission be audited and paid in the same manner as other expenditures for the District of Columbia.

"With the exception of the secretary and the attorney, all employees of the commission shall be appointed from lists of eligibles supplied by the Civil Service Commission and in accordance with the civil service law."

SEC. 4. That Title II of such Act is amended by adding at the end thereof two new sections to read as follows:

"SEC. 123. In all cases where the owner of any rental property, apartment, or hotel has, prior to April 18, 1921, collected or received any rent or charge therefor in excess of the amount fixed in a determination of the commission made and in full force and effect in accordance with the provisions of the title, he may within thirty days after this section takes effect return such excess rental or charge to the tenant directly, and if such return is made within such period the owner shall not become liable under the provisions of section 112 of this Act. An owner who has obtained a judgment against a tenant for, or which includes, such rent or charge in excess of the amount fixed in such a determination of the commission shall move to vacate such judgment to the amount of such excess, within sixty days after this section takes effect. In case such motion is not made and such owner does not exercise reasonable diligence to have such judgment vacated, such judgment, to the amount of such excess, shall be null and void.

"SEC. 124. (*a*) Any violation of this Act or of any order

of the commission, committed before the termination of this Act may, after such termination, be prosecuted by and in the name of the Attorney General in lieu of the commission in the same manner and with the same effect as if this Act had not been terminated.

"(*b*) In the case of (1) any proceeding begun under the provisions of section 114 before the termination of this Act, or (2) any proceeding on appeal from a determination of the commission begun before the termination of this Act, such proceeding may, after such termination, be continued in the same manner with the same effect as if this Act had not been terminated, and all powers and duties in respect to such proceedings vested in the commission by this Act shall for the purposes of such proceedings be vested in the Attorney General.

"(*c*) Any right or obligation based upon any provision of this Act or upon any order of the commission, accrued prior to the termination of this Act may, after the termination of this Act, be enforced in the same manner and with the same effect as if this Act had not been terminated.

"(*d*) The Attorney General may, after the termination of this Act, appoint the attorney last appointed by the commission under the provisions of section 103 to assist in the enforcement of this Act. Such attorney shall continue to receive compensation for such services at the rate of $5,000 per annum, payable monthly."

Sec. 5. That the provision of this Act, except section 2, shall take effect upon the enactment of the Act. Section 2 shall take effect on and after October 22, 1921.

Approved, August 24, 1921.

42 U. S. Stat., 200.

[PUBLIC—No. 222—67TH CONGRESS.]

[S. 2919. 42 U. S. Stat., 543.]

An Act To extend for the period of two years the provisions of Title II of the Food Control and the District of Columbia Rents Act, approved October 22, 1919, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared that the emergency described in Title II of the Food Control and the District of Columbia Rents Act still exists and continues in the District of Columbia, and that the present housing and rental conditions therein require the further extension of the provisions of such title.

SEC. 2. That Title II of the Food Control and the District of Columbia Rents Act, as amended, is reenacted, extended, and continued, as hereinafter amended, until the 22nd day of May, 1924, notwithstanding the provisions of section 1 of the Act entitled "An Act to extend for the period of seven months the provisions of Title II of the Food Control and the District of Columbia Rents Act, approved October 22, 1919, and for other purposes," approved August 24, 1921.

SEC. 3. That section 101 of the Food Control and the District of Columbia Rents Act, as amended, is amended to read as follows:

"SEC. 101. When used in this title, unless the context indicates otherwise—

"(*a*) The term 'rental property' means any building or part thereof or land appurtenant thereto in the District of Columbia rented or hired, and the service agreed or required by law or by determination of the commission to be furnished in connection therewith; but does not include (1) a garage or warehouse, (2) any other building or part thereof or land appurtenant thereto used by the tenant exclusively for a business purpose other than the subleasing or otherwise

subcontracting for use for living accommodations, or (3) any apartment or hotel.

"(*b*) The term 'person' includes an individual, partnership, association, or corporation.

"(*c*) The term 'apartment' means any apartment or apartment hotel, or part thereof, in the District of Columbia rented or hired and the land and outbuildings appurtenant thereto, and the service agreed or required by law or by determination of the commission to be furnished in connection therewith.

"(*d*) The term 'owner' includes a lessor or sublessor, or other person entitled to receive rent or charges for the use or occupancy of any rental property or apartment, or any interest therein, or his agent.

"(*e*) The term 'tenant' includes a subtenant, lessee, sublessee, or other person, not the owner, entitled to the use or occupancy of any rental property or apartment.

"(*f*) The term 'service' includes the furnishing of light, heat, water, telephone or elevator service, furnishings, window shades, screens, awnings, storage, kitchen, bath and laundry facilities and priviliges, maid service, janitor service, removal of refuse, making all repairs suited to the type of building or necessitated by ordinary wear and tear, and any other privilege or service connected with the use or occupancy of any rental property or apartment.

"(*g*) The term 'commission' means the Rent Commission of the District of Columbia."

SEC. 4. That section 102 of the Food Control and the District of Columbia Rents Act is amended to read as follows:

"SEC. 102. (*a*) A commission is hereby created and established to be known as the Rent Commission of the District of Columbia. After this section, as amended, takes effect, the commission shall be composed of five commissioners, to be appointed by the President, by and with the advice and consent of the Senate; except that the present commissioners in office at the time this section, as amended, takes effect shall continue in office and shall have and exercise all

the rights, powers, and duties vested in the commissioners by law until such time as a majority of the five commissioners whose appointment is provided for by this subdivision take office. The term of the five commissioners shall be for the period beginning at the time of taking office and ending May 22, 1924. Any vacancy in the office of any such commissioner shall be filled in the same manner as the original appointment, except that the appointment of the commissioner shall be made only for the unexpired term of the commissioner whom he succeeds.

"(*b*) In case of a vacancy in the office of one of the present commissioners prior to the time that a majority of the commissioners whose appointment is provided for by subdivision (a) take office a successor to such commissioner may be appointed by the President, by and with the advice and consent of the Senate. The term of such successor shall be for the period beginning at the time of taking office and ending at the time that a majority of the commissioners whose apointment is provided for by subdivision (a) take office.

"(*c*) No commissioner shall be appointed who is directly or indirectly engaged in, or in any manner interested in or connected with, the real estate or renting business in the District of Columbia.

"(*d*) All appointments of commissioners made before January 1, 1922, whether or not made in accordance with the law in effect at the time such appointments were made, are hereby validated and confirmed. All acts by or under the authority of the commission made in the administration of this Act and all proceedings instituted by or before the commission prior to the time this section, as amended, takes effect shall, for all purposes, be regarded as having the same status as if such appointments had been valid at the time when made.

"(*e*) The commission shall at the time of its organization and annually thereafter elect a chairman from its member-

ship. The commission may make such rules and regulations as may be necessary to carry this title into effect. All powers and duties of the commission may be exercised by a majority of its members. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission. The commission shall have an official seal, which shall be judicially noticed."

SEC. 5. That the last sentence of the first paragraph of section 105 of the Food Control and the District of Columbia Rents Act is amended to read as follows:

"Each member of the commission may sign subpœnas, administer oaths and affirmations, summon and examine witnesses, conduct hearings, and receive evidence touching any matter which the commission is authorized to consider or investigate, and the substance of such evidence, when certified to the commission by the member of the commission who heard and received the same and when filed by the commission with the papers pertaining to such matter, may be made the basis of the commission's determination respecting the matter under consideration or investigation."

SEC. 6. That the last paragraph of section 105 of the Food Control and the District of Columbia Rents Act is amended to read as follows:

"Such attendance of witnesses and the production of such books, accounts, records, papers, and correspondence may be required from any place in the United States at any designated place of hearing. In case of disobedience to a subpœna or of the contumacy of any witness appearing before the commission, or in case of the failure to file with the commission any plans or other data required by the commission under section 117 of this title, the commission may invoke the aid of the Supreme Court of the District of Columbia or of any district court of the United States. Such court may thereupon issue an order requiring the person subpœnaed to obey the subpœna or to give evidence touching the matter in question or to file the plans or other data. Any failure to obey

such order of the court may be punished by such court as a contempt thereof. No officer or employee of the commission shall, unless authorized by the commission or by a court of competent jurisdiction, make public any information obtained by the commission."

SEC. 7. That section 106 of the Food Control and the District of Columbia Rents Act is amended to read as follows:

"SEC. 106. (*a*) For the purposes of this title it is declared that all rental property and apartments are affected with a public interest, and that all rents and charges therefor, all service in connection therewith, and all other terms and conditions of the use or occupancy thereof, shall be fair and reasonable; and any unreasonable or unfair provision of a lease or other contract for the use or occupancy of such rental property or apartment, with respect to such rents, charges, service, terms, or conditions is hereby declared to be contrary to public policy. The commission upon its own initiative may, or upon complaint shall, determine whether the rent, charges, service, and other terms or conditions of a lease or other contract for the use or occupancy of any such rental property or apartment are fair and reasonable. Such complaints may be made and filed by or on behalf of any tenant, and by or on behalf of the owner of any rental property or apartment, notwithstanding the existence of a lease or other contract between the tenant and the owner. In fixing and determining the fair and reasonable rents, or charges for any rental property or apartment, the commission shall, in all cases, take into consideration the character and condition of the property and the character of the service, if any, furnished in connection therewith.

"(*b*) In all such cases the commission shall give notice personally or by registered mail and afford an opportunity to be heard to all parties in interest: *Provided,* That notice given by the commission to an agent for the collection of rents due his principal shall be deemed and held to be good and sufficient notice to the principal. The commission shall

promptly hear and determine the issues involved in all complaints submitted to it. All hearings before the commission, or any member of the commission, shall be open to the public. If the commission finds that the existing rents, charges, service, or other terms or conditions of the use or occupancy of any rental property or apartment are unfair and unreasonable, it shall fix and determine the fair and reasonable rents or charges for the rental property or apartment under consideration; and may fix and determine the fair and reasonable service, terms, and conditions of the use or occupancy of the rental property or apartment, and may also order and require the furnishing of such service by the owner as it shall lawfully determine to be fair and reasonable.

"(*c*) In any suit in any court of the United States or the District of Columbia involving any question arising out of the relation of landlord and tenant with respect to any rental property or apartment, except on appeal from the commission's determination as provided in this title, such court shall determine the rights and duties of the parties in accordance with the determination and regulations of the commission relevant thereto.

"(*d*) The commission shall file with its determination a finding of the facts on the evidence presented, and upon which its determination is based. Such finding of facts shall set out the following: (1) The fair and reasonable value of the whole property, (2) the allowance for maintenance, repairs, taxes, service, and all other expenses, (3) the separate rentals of the whole property as fixed by the commission, or if not fixed by the commission, then as paid by the tenants, (4) the commission's estimated net return to the owner upon the value as fixed by it, and (5) such other findings of fact as the commission deems proper to submit. Such findings of fact shall constitute a part of the record of the case."

SEC. 8. That section 108 of the Food Control and the District of Columbia Rents Act is amended to read as follows:

"SEC. 108. (*a*) Unless within ten days after the filing of

the commission's determination any party to the complaint appeals therefrom to the Supreme Court of the District of Columbia in general term, the determination of the commission shall be final and conclusive. The Supreme Court of the District of Columbia, in general term, is hereby given jurisdiction to hear and determine appeals taken from determinations of the commission, and such appeals shall be given precedence over the other business of the court. At the hearing of such appeals the chief justice of the court shall preside, with at least two of the associate justices thereof, to be designated by the chief justice. In the absence of the chief justice, the senior associate justice of the court shall preside, have the powers, and perform the duties of the chief justice.

"(*b*) If such an appeal is taken from the determination of the commission, the record before the commission or such part thereof as the court may order shall be certified by it to the court and shall constitute the record before the court, and the commission's determination shall not be modified or set aside by the court, except for error of law.

"(*c*) If any party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original determination, with the return of such additional evidence.

"(*d*) In the proceedings before such court on appeal from a determination of the commission, the commission shall

appear by its attorney or other representative and submit oral or written arguments to support the findings and the determination of the commission.

"(*e*) No determination of the commission shall be affirmed, set aside, modified, or otherwise reviewed, or its enforcement in any manner stayed, except upon appeal from such determination as provided by this title."

SEC. 9. That section 109 of the Food Control and the District of Columbia Rents Act is amended to read as follows:

"SEC. 109. (*a*) The right of a tenant to the use or occupancy of any rental property or apartment, existing at the time this Act takes effect, or thereafter acquired, under any lease or other contract for such use or occupancy or under any extension thereof by operation of law, shall, notwithstanding the expiration of the term fixed by such lease or contract, continue at the option of the tenant, subject, however, to any determination or regulation of the commission relevant thereto; and such tenant shall not be evicted or dispossessed so long as he pays the rent and performs the other terms and conditions of the tenancy as fixed by such lease or contract, or, in case such lease or contract is modified by any determination or regulation of the commission, then as fixed by such modified lease or contract.

"(*b*) All remedies of the owner at law or equity, based on any provision of any such lease or contract to the effect that such lease or contract shall be determined or forfeited if the premises are sold, are hereby suspended so long as this title is in force. Every purchaser shall take conveyance of any rental property or apartment subject to the rights of tenants as provided in this title.

"(*c*) The rights of the tenant under this title shall be subject to the limitation that the bona fide owner of any rental property or apartment shall, upon giving thirty days' notice in writing, served in the manner provided by section 1223 of the Act entitled 'An Act to establish a code of laws for the District of Columbia,' approved March 3, 1901, as amended (which notice shall contain a full and correct

statement of the facts and circumstances upon which the same is based), have the right to possession thereof, (1) if necessary immediately for actual and bona fide occupancy by himself, or his wife, children, or dependents, or for the making of material repairs or alterations, or for the remodeling or erection of a new building, whether or not to be used for rental purposes by the owner, or for any other purpose inconsistent with the continued use or occupancy of the existing tenant, if such purpose does not involve unfair discrimination against such tenant and in favor of any subsequent tenant, or (2) if the tenant commits waste, nuisance, breach of peace, or is otherwise disorderly upon the premises; but in no case shall possession be demanded or obtained by such owner in contravention of the terms of any such lease or contract. After the expiration of the thirty days' period specified in such notice, the owner of the rental property or apartment may recover possession thereof in accordance with such Act of March 3, 1901, as amended. If there is a dispute between the owner and the tenant as to the accuracy or sufficiency of the statement set forth in such notice, as to the good faith of such demand, or as to the service of notice, the matters in dispute shall be determined by the court in the proceedings for the recovery of possession. Any such dispute pending before the commission upon complaint at the time this section as amended takes effect shall be determined by the court in accordance with the provisions of this section.

"(*d*) During the period between the service of the notice and the final decision in the proceedings for the recovery of possession the tenant shall pay to the owner rent in accordance with the terms of the lease or other contract for the use or occupancy of the rental property or apartment, or, in case such lease or contract is modified by any determination of the commission, then in accordance with such modified lease or contract. Acceptance of such rent by the owner shall not be held a waiver by him of any right under the provisions of this section or under the terms of the lease

or contract. If any tenant fails so to pay rent to the owner during such period, the rights of the tenant under this section shall cease."

SEC. 10. That section 110 of Title II of the Food Control and the District of Columbia Rents Act is amended by inserting "(*a*)" after the section number and by amending the last sentence thereof to read as follows:

"(*b*) In case of the increase of the rent for the use or occupancy of any rental property or apartment, made by a determination of the commission from which an appeal is taken by the tenant under the provisions of this title, the tenant shall, from time to time during the period between the filing of the determination and the time when the determination becomes final, and in accordance with the terms of the lease or other contract, pay to the commission the amount of the increase and to the owner the remainder of the amount of rent fixed by the determination. In lieu of such payments the tenant may, in the discretion of the commission and at the time of taking the appeal, give bond, approved by the commission, for the payment of the amount of the increase. The disposition of moneys so paid to the commission and the payments under the terms of the bond shall be made in accordance with the determination of the commission as modified by the final decision on appeal. The court shall dismiss the appeal of any tenant who fails to comply with this subdivision.

"(*c*) In case of a decrease of the rent by any such determination, the tenant shall, from time to time during such period and in accordance with the terms of the lease or other contract, pay to the owner the amount of rent fixed by the determination. The difference, if any, between the amount of rent paid during such period and the amount that would have been payable for such period, under the determination as modified in accordance with the final decision on appeal, may be added to future rent payments or used for and recovered in an action in the municipal court of the District of Columbia.

"(*d*) The amendment of this section shall not be held to terminate any right for the recovery of rent in an action in the municipal court of the District of Columbia if such right arose prior to the time that this section as amended takes effect.

"(*e*) The decision of the Supreme Court of the District of Columbia upon appeal from any determination of the commission shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari to the same extent as cases subject to such review under section 240 of the Judicial Code, if such writ is duly applied for within thirty days after the decision is rendered. The issue of the writ shall not operate as a supersedeas or in any manner stay or postpone the decision of the Supreme Court of the District of Columbia if such decision affirms or modifies the determination of the commission."

SEC. 11. That section 111 of the Food Control and the District of Columbia Rents Act is amended to read as follows:

"SEC. 111. The determination of the commission in a proceeding begun by complaint or upon its own initiative fixing fair and reasonable rents, charges, service, and other terms and conditions of use or occupancy of any rental property or apartment shall constitute the commission's determination of the fairness and reasonableness of such rents, charges, service, terms, or condition for the rental property or apartment affected, and shall remain in full force and effect notwithstanding any change in ownership or tenancy thereof, unless and until the commission modifies or sets aside such determination upon complaint either of the owner or of the tenant."

SEC. 12. That section 112 of the Food Control and the District of Columbia Rents Act is amended to read as follows:

"SEC. 112. (*a*) If the owner of any rental property or apartment collects any rent or charge therefor in excess of

the amount fixed in a determination of the commission made and in full force and effect in accordance with the provisions of this title, he shall be liable for and the commission is hereby authorized and directed to commence an action in the municipal court of the District of Columbia to recover double the amount of such excess, together with the costs of the proceeding, which shall include an attorney's fee of $50, to be taxed as part of the costs. Such actions shall be brought in the municipal court, regardless of the amount to be recovered, and the municipal court is hereby given special jurisdiction to hear and determine all such cases.

"(*b*) The commission is hereby authorized to bring such actions without the payment of costs, and no bond shall be required in the case of any appeal taken by the commission from any judgment of the municipal court in any such case. Out of any sums received on account of such recovery the commission shall pay over to the tenant the amount of the excess so paid by him and the balance shall be paid into the Treasury of the United States to the credit of the District of Columbia: *Provided*, That if the commission finds that such excess was paid by the tenant voluntarily and with knowledge of the commission's determination, the whole amount of such recovery shall be paid into the Treasury of the United States to the credit of the District of Columbia.

"(*c*) The commission may compromise any case arising under this section instead of commencing an action in respect thereto, or may compromise such case after an action in respect thereto has been commenced. Whenever any such case is compromised there shall be placed on file in the office of the commission a written opinion of the commission or its attorney stating the reasons for such compromise, the amount of the excess rent or charge for which the owner is liable, and the amount thereof actually paid in accordance with the terms of the compromise."

SEC. 13. That section 113 of the Food Control and the District of Columbia Rents Act is amended to read as follows:

"SEC. 113. (*a*) If in any proceeding before the commission, begun by complaint or on the commission's own initiative, and involving any lease or other contract for the use or occupancy of any rental property or apartment, the commission finds that at any time after the passage of this Act, but during the tenancy, the owner has, directly or indirectly, willfully withdrawn from the tenant any service agreed or required by a determination of the commission to be furnished, or has by act, neglect, or omission contrary to such lease or contract or to the law or any ordinance or regulation made in pursuance of law, or of a determination of the commission exposed the tenant, directly or indirectly, to any unsafe or insanitary condition, or imposed upon him any burden, loss, or unusual inconvenience in connection with his use or occupancy of such rental property or apartment, the commission shall determine the sum which in its judgment will fairly and reasonably compensate or reimburse the tenant therefor. In any such proceeding involving a lease or other contract, in which the term specified had not expired at the time the proceeding was begun, the commission shall likewise determine the amount or value of any bonus or other consideration in excess of the rental named in such lease or contract received at any time directly or indirectly by the owner in connection with such lease or contract. The tenant may recover any amount so determined by the commission in an action in the municipal court of the District of Columbia.

"(*b*) Any person who, after the passage of this amendatory Act willfully fails to furnish the tenants of any rental property or apartment such service (1) as has ordinarily been furnished the tenant of such rental property or apartment prior to such failure, or (2) as is required either expressly or impliedly to be furnished by the lease or other contract for the use or occupancy of the rental property or apartment, or any extension thereof by operation of law, shall, upon conviction, be punished by a fine not exceeding

$1,000 or by imprisonment for not more than one year, or by both."

SEC. 14. That section 116 of the Food Control and the District of Columbia Rents Act is amended to read as follows:

"SEC. 116. Any person who with intent to avoid the provisions of this title enters into any agreement or arrangement for the payment of any bonus or other consideration in connection with any lease or other contract for the use or occupancy of any rental property, or apartment, or who participates in any fictitious sale or other device or arrangement the purpose of which is to grant or obtain the use or occupancy of any rental property or apartment without subjecting such use or occupancy to the provisions of this title or to the jurisdiction of the commission, shall upon conviction be punished by a fine not exceeding $1,000, or by imprisonment for not exceeding one year, or by both."

SEC. 15. That section 117 of the Food Control and the District of Columbia Rents Act is amended to read as follows:

"SEC. 117. (*a*) The commission shall prescribe standard forms of leases and other contracts for the use or occupancy of any rental property or apartment and shall require their use by the owner thereof. Every such lease or contract entered into after the commission has prescribed and promulgated a form for the tenancy provided by such lease or contract shall be deemed to accord with such standard forms; and any such lease or contract in any proceeding before the commission or in any court of the United States or of the District of Columbia shall be interpreted, applied, and enforced in the same manner as if it were in the form and contained the stipulations of such standard form.

"(*b*) The owner of an apartment shall file with the commission, but only in such cases as the commission deems necessary, plans and other data in such detail as the commission requires, descriptive of the rooms, accommodations, and service in connection with such apartment, and a sched-

ule of rates and charges therefor. The commission shall, after consideration, of such plans, schedules, data, or other information, determine and fix a schedule of fair and reasonable rates and charges for such apartments; and the rates and charges stated in such schedule shall thereafter constitute the fair and reasonable rates and charges for such apartment. The commission's determination in such case shall be made after such notice and hearing and shall have the same force and effect and be subject to appeal in the same manner as a determination of the commission under section 106 of this title."

SEC. 16. That section 118 of the Food Control and the District of Columbia Rents Act is amended by adding at the end thereof a new sentence to read as follows: "This section shall not be construed as in any way authorizing the assignment of any lease or the subletting of any rental property or apartment in violation of the terms of the lease or other contract for the use or occupancy of the rental property or apartment, or of such lease or contract as extended by operation of law."

SEC. 17. That subdivision (*b*) of section 124 of the Food Control and the District of Columbia Rents Act, as amended, is amended to read as follows:

"(*b*) In the case of (1) any proceeding begun under the provisions of section 114 before the termination of this title, or (2) any proceeding on appeal from a determination of the commission begun before the termination of this title, such proceeding may, after such termination, be continued in the same manner with the same effect as if this title had not been terminated, and all powers and duties in respect to such proceedings (including the custody and disposition of moneys paid under section 110) vested in the commission by this title shall for the purposes of such proceedings be vested in the Attorney General.

SEC. 18. The Food Control and the District of Columbia Rents Act is amended by adding at the end thereof a new section to read as follows :

"SEC. 125. The commission shall, as soon as practicable after this section takes effect and at least semiannually thereafter, publish its determinations, opinions, rulings, and regulations, all important court and administrative decisions in respect to this Act, and such provisions of the law relating to landlords and tenants as the commission deems advisable, together with a cumulative index-digest thereof."

SEC. 19. This Act shall take effect upon its passage; except that if its passage occurs after May 21, 1922, it shall be held to have taken effect as of such date.

SEC. 20. That all Acts or parts of Acts in conflict herewith are, to the extent that they are in such conflict, suspended so long as Title II of the Food Control and the District of Columbia Rents Act is in force.

Approved May 22, 1922.

42 U. S. Stat., 543.

THE CHASTLETON CORPORATION ET AL. *v.* SINCLAIR ET AL., RENT COMMISSION OF THE DISTRICT OF COLUMBIA, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 467. Argued March 12, 13, 1924.—Decided April 21, 1924.

1. The remedy by appeal from orders of the Rent Commission afforded by the District of Columbia Rent Act, *held* not an adequate remedy at law precluding equity jurisdiction of a suit attacking an order upon the grounds that the statute itself is unconstitutional and that the order affects parties who were strangers to the proceedings in which it was made. P. 547.

2. The Act of October 22, 1919, regulating rents in the District of Columbia, and upheld as an emergency measure in *Block* v. *Hirsh*, 256 U. S. 135, was continued in force by a subsequent act until May 22, 1922, on which day a third act, declaring that the emergency still existed, reënacted the law with amendments and provided that it continue until May 22, 1924. *Held:*

(a) A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change. P. 547.

(b) Where an order of the Rent Commission, although retrospective, was passed some time after the last of the above mentioned statutes, it was open to the courts to inquire whether the exigency still existed upon which continued operation of the law depended. P. 548.

(c) Allegations in the bill in this case that the emergency had ceased in 1922, cannot be declared offhand to be unmaintainable, in view of judicial knowledge of present conditions in Washington. *Id.*

(d) This Court may ascertain as it sees fit any fact that is merely a ground for laying down a rule of law. *Id.*

(e) But where it was material to know conditions at different dates in the past, *held* that, for convenience, the facts should be gathered and weighed by the court of first instance and the evidence preserved for consideration by this Court if necessary. P. 549.

290 Fed. 348, reversed.

APPEAL from a decree of the Court of Appeals of the District of Columbia affirming a decree of the Supreme Court of the District, which dismissed on motion a bill to restrain the enforcement of an order of the Rent Commission cutting down the rents in an apartment house.

Mr. W. Gwynn Gardiner for appellants.

The facts alleged by the bill and admitted by the motion to dismiss establish that no emergency existed in the District of Columbia, at the time of the passage of the Rent Act in question, at the time of the proceedings before the Rent Commission involving the property in question, or at the time of the filing of this suit.

In like manner it is an admitted fact that the demand for apartments in the District of Columbia at the time of the filing of this bill and at the time of the passage of the act was not as great as the number of apartments offered for rent.

While a declaration by a legislature concerning public conditions is entitled to at least great respect, yet it may not be held conclusive by the courts when the facts in the record show contrary conditions to exist. See *Shoemaker* v. *United States*, 147 U. S. 282; *Hairston* v. *Danville & Western Ry. Co.*, 208 U. S. 598; *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210; *Producers Transp. Co.* v. *Railroad Comm.*, 251 U. S. 228; *Block* v. *Hirsh*, 256 U. S. 135; *Mugler* v. *Kansas*, 123 U. S. 661; *Buchanan* v. *Warley*, 245 U. S. 60.

There being no emergency, enforcement of the act becomes violative of the Fifth Amendment. *Missouri Pacific Ry. Co.* v. *Nebraska*, 164 U. S. 403; *Wilkinson* v. *Leland*, 2 Pet. 627; *Monongahela Nav. Co.* v. *United States*, 148 U. S. 312; *Ochoa* v. *Hernandez*, 230 U. S. 139; *Adkins* v. *Children's Hospital*, 261 U. S. 525; *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393.

Mr. Chapin Brown and *Mr. Robert H. McNeill* for appellees.

The Rent Act and amendments provide for a full judicial hearing by appeal.

The Rent Commission acquired full jurisdiction over the parties in interest, and the subject matter to be adjudicated.

When this Court, in *Block* v. *Hirsh*, 256 U. S. 135, held the Rent Act of October 22, 1919, constitutional, it necessarily decided that, when the same or similar conditions exist, Congress has the constitutional right to enact the same or similar legislation, either of a temporary or a permanent duration.

Acting upon this constitutional right, Congress, by Act of August 24, 1921, first extended the Rent Act for seven months, and by the Act of May 22, 1922, extended it for two more years, to May 22, 1924. In the last mentioned act, Congress determined: "That it is hereby declared that the emergency described in Title II of the Food Control and the District of Columbia Rents Act still exists and continues in the District of Columbia, and that the present housing and rental conditions therein require the further extension of the provisions of such title."

This Court has decided that such a legislative declaration is binding upon the courts. *United States* v. *Des Moines Nav. & Ry. Co.*, 142 U. S. 510; *Moeschen* v. *Tenement House Dept.*, 203 U. S. 583; *Jacobson* v. *Massachusetts*, 197 U. S. 11; *Holden* v. *Hardy*, 169 U. S. 391; *Gardner* v. *Michigan*, 199 U. S. 325; *Levy Leasing Co.* v. *Siegel*, 258 U. S. 242.

The power of Congress over the District of Columbia (Const. Art. I, § 8) is greater than that which the States may exercise within their dominions. It is practically a war power, even in times of peace, because the right "to exercise exclusive legislation in all cases whatsoever, over forts," etc., is in fact a war power, and Congress has the same power to enact such legislation for the District of Columbia, at all times.

The allegation in the bill that no emergency exists is a mere conclusion, not admitted by the motion to dismiss. Such allegations cannot overcome the solemn determination of Congress. *United States* v. *Des Moines Nav. & Ry. Co.*, 142 U. S. 510.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a bill in equity brought to restrain the enforcement of an order of the Rent Commission of the District of Columbia cutting down the rents for apartments in the Chastleton apartment house in this city. The defendants are the Rent Commission and the tenants of the building. The order was passed on August 7, 1922, and purports to fix the reasonable rates from the preceding first of March. The bill seems to have been filed on October 27, 1922, and seeks relief on several grounds. The first and most important is that the emergency that justified interference with the ordinarily existing private rights in 1919 had come to an end in 1922, and no longer could be applied consistently with the Fifth Amendment of the Constitution. Subordinate ones are that the plaintiff Hahn bought the premises on September 25, 1922, it would seem under foreclosure of a preëxisting mortgage or deed of trust, and that he and his grantee, the Chastleton Corporation, were strangers to the proceeding before the Commission and not bound by it, but that the tenants not only were relying upon it but were making it a ground for demanding repayment from the Corporation of rents paid in excess of the sums fixed by the Commission after March 1, 1922, although the Corporation did not receive them. On motion the bill was dismissed by the Courts below, the Court of Appeals, in view of *Block* v. *Hirsh*, 256 U. S. 135, leaving it for this Court to say whether conditions had so far changed as to affect the constitutional applicability of the law. The allegations do not make the position of the

Chastleton Corporation and Hahn sufficiently clear and therefore we feel bound to consider the constitutional question that the bill seeks to raise.

It is objected that the plaintiffs have an adequate remedy at law by way of appeal. But apart from the fact that it is doubtful whether the Chastleton Corporation and Hahn were not entitled to treat the order as a nullity so far as they were concerned, it is open to equal doubt whether in a proceeding under the law they could assail its validity. There are many tenants to be dealt with. However looked at a bill in equity is the natural and best way of settling the parties' rights. See e. g. *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170.

The original Act of October 22, 1919, c. 80, Title II, 41 Stat. 297, considered in *Block* v. *Hirsh*, was limited to expire in two years. § 122. The Act of August 24, 1921, c. 91, 42 Stat. 200, purported to continue it in force, with some amendments, until May 22, 1922. On that day a new act declared that the emergency described in the original Title II still existed, reënacted with further amendments the amended Act of 1919, and provided that it was continued until May 22, 1924. Act of May 22, 1922, c. 197, 42 Stat. 543.

We repeat what was stated in *Block* v. *Hirsh*, 256 U. S. 135, 154, as to the respect due to a declaration of this kind by the legislature so far as it relates to present facts. But even as to them a Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared. 256 U. S. 154. *Chas. Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522, 536. And still more obviously so far as this declaration looks to the future it can be no more than prophecy and is liable to be controlled by events. A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though

valid when passed. *Perrin* v. *United States*, 232 U. S. 478, 486, 487. *Missouri* v. *Chicago, Burlington & Quincy R. R. Co.*, 241 U. S. 533, 539, 540. In *Newton* v. *Consolidated Gas Co.*, 258 U. S. 165, a statutory rate that had been sustained for earlier years in *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19, was held confiscatory for 1918 and 1919.

The order, although retrospective, was passed some time after the latest statute, and long after the original act would have expired. In our opinion it is open to inquire whether the exigency still existed upon which the continued operation of the law depended. It is a matter of public knowledge that the Government has considerably diminished its demand for employees that was one of the great causes of the sudden afflux of people to Washington, and that other causes have lost at least much of their power. It is conceivable that, as is shown in an affidavit attached to the bill, extensive activity in building has added to the ease of finding an abode. If about all that remains of war conditions is the increased cost of living, that is not in itself a justification of the act. Without going beyond the limits of judicial knowledge, we can say at least that the plaintiffs' allegations cannot be declared offhand to be unmaintainable, and that it is not impossible that a full development of the facts will show them to be true. In that case the operation of the statute would be at an end.

We need not enquire how far this Court might go in deciding the question for itself, on the principles explained in *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210, 227. See *Gardner* v. *Collector*, 6 Wall. 499. *South Ottawa* v. *Perkins*, 94 U. S. 260. *Jones* v. *United States*, 137 U. S. 202. *Travis* v. *Yale & Towne Manufacturing Co.*, 252 U. S. 60, 80. These cases show that the Court may ascertain as it sees fit any fact that is merely a ground for laying down a rule of law, and if the question

were only whether the statute is in force today, upon the facts that we judicially know we should be compelled to say that the law has ceased to operate. Here however it is material to know the condition of Washington at different dates in the past. Obviously the facts should be accurately ascertained and carefully weighed, and this can be done more conveniently in the Supreme Court of the District than here. The evidence should be preserved so that if necessary it can be considered by this Court.

Judgment reversed.

MR. JUSTICE BRANDEIS, concurring in part.

So far as concerns The Chastleton Corporation and Hahn, I agree that the decree should be reversed. So far as concerns the plaintiff Lake, the bill was properly dismissed for want of equity; among other reasons, because his administrative appeal from the order of the Rent Commission was pending in the Supreme Court of the District when this suit was begun, and still remains undisposed of. *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210.

If protection of the rights of The Chastleton Corporation and Hahn required us to pass upon the constitutionality of the District Rent Acts, I should agree, also, to the procedure directing the lower court to ascertain the facts. But, in my opinion, it does not. For (on facts hereinafter stated which appear by the bill and which were, also, admitted at the bar) the order entered by the Commission is void as to them, even if the Rent Acts are valid. To express an opinion upon the constitutionality of the acts, or to sanction the enquiry directed, would, therefore, be contrary to a long-prevailing practice of the Court.[1]

[1] "It [the Court] has no jurisdiction to pronounce any statute, either of a State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies. In the exercise of that

The District Rent Act of 1921 (which was in force when the proceeding before the Commission was begun, and thereafter until May 22, 1922) provides, that in all "cases the commission shall give notice personally or by registered mail and afford an opportunity to be heard to all parties in interest." Act of October 22, 1919, c. 80, Title II, § 106, 41 Stat. 297, 300, as amended by Act of August 24, 1921, c. 91, 42 Stat. 200. The District Rent Act of 1922 (which was in force when the order of the Commission was entered) amended this clause concerning notice by adding thereto the words: "*Provided*, That notice given by the commission to an agent for the collection of rents due his principal shall be deemed and held to be good and sufficient notice to the principal." Act of May 22, 1922, c. 197, § 7, 42 Stat. 543, 546.

The proceeding in which the order of the Rent Commission issued was begun January 25, 1922. Its order was entered August 7, 1922. When the proceeding before the Commission was begun, the plaintiff Lake was the owner of the property subject to mortgages theretofore executed

---

jurisdiction, it is bound by two rules, to which it has rigidly adhered, one, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied. These rules are safe guides to sound judgment. It is the dictate of wisdom to follow them closely and carefully." *Steamship Co.* v. *Emigration Commissioners*, 113 U. S. 33, 39.

"Whenever, in pursuance of an honest and actual antagonistic assertion of rights by one individual against another, there is presented a question involving the validity of any act of any legislature, State or Federal, and the decision necessarily rests on the competency of the legislature to so enact, the court must, in the exercise of its solemn duties, determine whether the act be constitutional or not; but such an exercise of power is the ultimate and supreme function of courts. It is legitimate only in the last resort, and as a necessity . . ." *Chicago & Grand Trunk Ry. Co.* v. *Wellman*, 143 U. S. 339, 345. Compare *Atherton Mills* v. *Johnston*, 259 U. S. 13.

and duly recorded. After the order was entered (and while that proceeding was pending on appeal in the Supreme Court of the District) the plaintiff Hahn purchased the property under the foreclosure of one of these mortgages. Thereafter, and before the institution of this suit, Hahn conveyed the property to his co-plaintiff, The Chastleton Corporation. Hahn and the corporation do not claim title under Lake. They claim title as purchasers under the foreclosure of a mortgage which antedated Lake's purchase. Notice of the proceedings before the Commission was never served on the holder of the mortgage; and, of course, not on Hahn or on The Chastleton Corporation. The only notice ever served on anyone was that given, on January 25, 1922, "To the F. H. Smith Co., Agent".—That company was then the rental agent of the property for Lake. It had no authority to represent in any way either the mortgagee or those claiming under him.

As the required notice was not served on the mortgagee, nor on those claiming under him, and as F. H. Smith Co. was not the agent of any of them, the order is necessarily void as to The Chastleton Corporation and Hahn. The doctrine of *lis pendens* has no application to persons so situated. *Terrell* v. *Allison*, 21 Wall. 289; *Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co.* v. *Long Island Loan & Trust Co.*, 172 U. S. 493. And Congress did not undertake to make the proceeding one *in rem* binding upon all the world regardless of lack of notice.